

MONTANA LEGISLATIVE HISTORY

Chapter 238 19 93

Bill H _____ S 46 Original bill & history ✓ C

H. Committee on Judiciary

S. Committee on Judiciary

Hearing Date(s) Mar 09 ✓ C

Hearing Date(s) Jan 12 ✓ C

_____ C

Jan 28 ✓ C

_____ C

_____ C

_____ C

_____ C

Date Out Mar 09 ✓ C

Jan 29 ✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

1/26	HEARING		
1/28	COMMITTEE REPORT—BILL CONCURRED		
1/30	2ND READING CONCURRED	89	6
2/03	3RD READING CONCURRED	96	3
	RETURNED TO SENATE		
2/08	SIGNED BY PRESIDENT		
2/09	SIGNED BY SPEAKER		
2/09	TRANSMITTED TO GOVERNOR		
2/15	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 38		
	EFFECTIVE DATE: 02/10/93		

SB 46 INTRODUCED BY HALLIGAN
REVISE UNIFORM PARTNERSHIP ACT

12/23	INTRODUCED		
12/23	REFERRED TO JUDICIARY		
1/04	FIRST READING		
1/12	HEARING		
1/14	FISCAL NOTE REQUESTED		
1/20	FISCAL NOTE RECEIVED		
1/21	FISCAL NOTE PRINTED		
1/29	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/30	2ND READING PASSED	42	0
2/01	3RD READING PASSED	47	0
	TRANSMITTED TO HOUSE		
2/02	FIRST READING		
2/02	REFERRED TO JUDICIARY		
3/09	HEARING		
3/10	COMMITTEE REPORT—BILL CONCURRED		
3/13	2ND READING CONCURRED	90	7
3/16	3RD READING CONCURRED	92	7
	RETURNED TO SENATE		
3/24	SIGNED BY PRESIDENT		
3/25	SIGNED BY SPEAKER		
3/30	TRANSMITTED TO GOVERNOR		
4/01	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 238		
	EFFECTIVE DATE: 10/01/93		

SB 47 INTRODUCED BY WEEDING
EXTEND INCOME TAX CREDIT FOR RURAL PHYSICIAN
ASSISTANTS-CERTIFIED

12/23	INTRODUCED
12/23	REFERRED TO TAXATION
1/04	FIRST READING
1/04	FISCAL NOTE REQUESTED
1/08	FISCAL NOTE RECEIVED
1/09	FISCAL NOTE PRINTED
1/15	HEARING
1/20	TABLED IN COMMITTEE

SB 48 INTRODUCED BY BURNETT
ELIMINATE STATE MEAT AND POULTRY INSPECTION PROGRAM

12/23	INTRODUCED
12/23	REFERRED TO AGRICULTURE, LIVESTOCK & IRRIGATION
1/04	FIRST READING
1/04	FISCAL NOTE REQUESTED

SENATE BILL NO. 46

INTRODUCED BY HALLIGAN

IN THE SENATE

DECEMBER 23, 1992	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 4, 1993	FIRST READING.
JANUARY 29, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
JANUARY 30, 1993	PRINTING REPORT.
	SECOND READING, DO PASS.
FEBRUARY 1, 1993	ENGROSSING REPORT.
	THIRD READING, PASSED. AYES, 47; NOES, 0.
	TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 2, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 10, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 13, 1993	SECOND READING, CONCURRED IN.
MARCH 16, 1993	THIRD READING, CONCURRED IN. AYES, 92; NOES, 7.
MARCH 17, 1993	RETURNED TO SENATE.

IN THE SENATE

MARCH 18, 1993	RECEIVED FROM HOUSE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

SENATE BILL NO. 46

INTRODUCED BY HALLIGAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAW CONCERNING PARTNERSHIPS; REVISING PROVISIONS GOVERNING PARTNERSHIP PROPERTY; REVISING THE RELATIONSHIP BETWEEN PARTNERS AND PERSONS DEALING WITH THE PARTNERSHIP; REVISING THE RELATIONSHIP OF PARTNERS TO THE PARTNERSHIP AND TO OTHER PARTNERS; REVISING THE LAW CONCERNING TRANSFEREES AND CREDITORS OF PARTNERS; PROVIDING FOR A PARTNER'S DISSOCIATION; REVISING THE LAW ON WINDING UP A PARTNERSHIP'S BUSINESS; PROVIDING FOR MERGERS AND CONSOLIDATIONS OF PARTNERSHIPS; AMENDING SECTIONS 31-2-106, 35-10-102, 35-10-103, 35-10-104, 35-10-105, 35-10-201, 35-10-202, 35-10-203, 35-10-301, 35-10-302, 35-10-303, 35-10-305, 35-10-307, 35-10-308, 35-10-309, 35-10-401, 35-10-402, 35-10-403, 35-10-405, 35-10-406, 35-10-505, 35-10-602, AND 35-10-609, MCA; AND REPEALING SECTIONS 35-10-303, 35-10-304, 35-10-306, 35-10-404, 35-10-501, 35-10-502, 35-10-503, 35-10-504, 35-10-507, 35-10-601, 35-10-603, 35-10-604, 35-10-605, 35-10-606, 35-10-607, 35-10-608, 35-10-610, 35-10-611, 35-10-612, 35-10-613, 35-10-614, AND 35-10-615, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 35-10-102, MCA, is amended to read:

"35-10-102. Definitions. In this chapter, the following definitions apply:

(1) "~~Bankrupt~~"~~---includes---bankrupt---under---the---Federal Bankruptcy Act or insolvent under any state insolvency act;~~

(2) "Business" includes every trade, occupation, or profession.

(3) "~~Conveyance~~"~~---includes---every---assignment,---lease, mortgage, or encumbrance;~~

(4) "~~Court~~"~~---includes---every---court---and---judge---having jurisdiction in the case;~~

(2) "Debtor in bankruptcy" means a person who is the subject of:

(a) an order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application; or

(b) a comparable order under state law governing insolvency.

(3) "Distribution" means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) "Partnership agreement" means an agreement, written or oral, among the partners concerning the partnership.

(5) "Partnership at will" means a partnership in which the partners have not agreed to remain partners until the

1 expiration of a definite term or the completion of a
2 particular undertaking.

3 (5)(6) "Person" includes--individuals,---partnerships,
4 corporations,---and--other--associations means an individual;
5 corporation; business trust; estate; trust; partnership;
6 association; joint venture; government; governmental
7 subdivision, agency, or instrumentality; or any other legal
8 or commercial entity.

9 (6)---"Real-property"--includes--land--and--any--interest--or
10 estate--in--land.

11 (7) "Property" means all property, real, personal, or
12 mixed, tangible or intangible, or any interest therein.

13 (8) "State" means a state of the United States, the
14 District of Columbia, the Commonwealth of Puerto Rico, or
15 any territory or insular possession subject to the
16 jurisdiction of the United States.

17 (9) "Statement" means a statement of partnership
18 authority under [section 17], a statement of denial under
19 [section 18], a statement of dissociation under [section
20 42], a statement of dissolution under [section 49], a
21 statement of merger under [section 57], or an amendment or
22 cancellation of the foregoing.

23 (10) "Transfer" includes an assignment, conveyance,
24 lease, mortgage, deed, and encumbrance."

25 **Section 2.** Section 35-10-103, MCA, is amended to read:

1 "35-10-103. Interpretation--of--knowledge Knowledge and
2 notice. (1) A person has--"knowledge"--of knows a fact within
3 the--meaning--of--this--chapter--not--only--when--he if the person
4 has actual knowledge thereof--but--also--when--he--has--knowledge
5 of--such--other--facts--as--in--the--circumstances--show--bad--faith
6 of it.

7 (2) A person has "notice" of a fact within--the--meaning
8 of--this--chapter--when if the person who--claims--the--benefit--of
9 the--notice:

10 (a) states--the--fact--to--such--person knows of it; or

11 (b) has received a notification of it; or

12 (c) has reason to know it exists from all of the facts
13 known to that person at the time in question.

14 (3) A person notifies or gives a notification to
15 another by taking steps reasonably required to inform the
16 other person in the ordinary course of business, whether or
17 not the other person learns of it.

18 (4) A person receives notification when it:

19 (a) comes to the person's attention; or

20 (b) delivers--through--the--mail--or--by--other--means--of
21 communication--a--written--statement--of--the--fact--to--such--person
22 or--to--a--proper--person--at--his is duly delivered at the
23 person's place of business or residence at any other place
24 held out by the person as a place for receiving
25 communications.

(5) Except as provided in subsection (6), a person other than an individual knows, has notice, or receives a notification of a fact for purposes of a particular transaction when the individual conducting the transaction knows, has notice, or receives a notification of the fact or in any event when the fact would have been brought to the individual's attention if the person had exercised reasonable diligence. The person exercises reasonable diligence if the person maintains reasonable routines for communicating significant information to the individual conducting the transaction and there is reasonable compliance with the routines. Reasonable diligence does not require an individual acting for the person to communicate information unless the communication is part of the individual's regular duties or the individual has reason to know of the transaction and that the transaction would be materially affected by the information.

(6) A partner's knowledge, notice, or receipt of a notification of a fact relating to the partnership is effective immediately as knowledge by, notice to, or receipt of a notification by the partnership but is not effective as such if the partner committed or consented to a fraud on the partnership."

Section 3. Section 35-10-104, MCA, is amended to read:

"35-10-104. Rules Uniformity of application and

~~construction. (1) The rule that statutes in derogation of the common law are to be strictly construed shall have no application to this chapter.~~

~~(2) The law of estoppel shall apply under this chapter.~~

~~(3) The law of agency shall apply under this chapter.~~

(4) This chapter shall must be so interpreted applied and construed as to effect effectuate its general purpose to make uniform the law with respect to the subject of this chapter of those among states which enact enacting it.

(5) ~~This chapter shall not be construed so as to impair the obligations of any contract existing on July 17, 1947, or to affect any action or proceedings begun or right accrued before July 17, 1947.~~

NEW SECTION. Section 4. Effect of partnership agreement -- nonwaivable provisions. (1) Except as provided in subsection (2), a partnership agreement governs relations among the partners and between the partners and the partnership. To the extent the partnership agreement does not otherwise provide, this chapter governs relations among the partners and between the partners and the partnership.

(2) A partnership agreement may not:

(a) vary the rights and duties under [section 6] except to eliminate the duty to provide copies of statements to all of the partners;

(b) unreasonably restrict a partner's right of access

1 to books and records under 35-10-402(2);

2 (c) eliminate the duty of loyalty under 35-10-405(3);

3 (d) unreasonably reduce the duty of care under
4 35-10-405(4);

5 (e) eliminate the obligation of good faith and fair
6 dealing under 35-10-405(5);

7 (f) vary the power to withdraw as a partner under
8 [section 36(1)], except to require the notice to be in
9 writing;

10 (g) vary the right to expulsion of a partner by a court
11 in the events specified in [section 36(5)];

12 (h) vary the requirement to wind up the partnership
13 business in cases specified in [section 44(4), (5), or (6)];
14 or

15 (i) restrict rights of third parties under this
16 chapter.

17 **Section 5.** Section 35-10-105, MCA, is amended to read:

18 "~~35-10-105. Rules--for--cases--not-provided-for-in-this~~
19 ~~chapter Supplemental principles of law. (1) In-any-case--not~~
20 ~~provided---for---in--this--chapter Unless displaced by a~~
21 ~~particular provision of this chapter, the rules principles~~
22 ~~of law and equity,--including-the-law-merchant,--shall-govern~~
23 ~~supplement this chapter.~~

24 (2) If an obligation to pay interest arises under this
25 chapter and the rate is not specified, the rate is that

1 specified in 31-1-106."

2 NEW SECTION. Section 6. Execution, filing, and
3 recording of statements. (1) A statement may be filed in the
4 office of the secretary of state. A certified copy of a
5 statement that is filed in an office in another state may be
6 filed in the office of the secretary of state. Either filing
7 has the effect provided in this chapter with respect to
8 partnership property located in or transactions that occur
9 in this state.

10 (2) A certified copy of a statement that has been filed
11 in the office of the secretary of state and recorded in the
12 office for recording transfers of real property has the
13 effect provided for recorded statements in this chapter. A
14 recorded statement that is not a certified copy of a
15 statement in the office of the secretary of state does not
16 have the effect provided for recorded statements in this
17 chapter.

18 (3) A statement filed by a partnership must be executed
19 by at least two partners. Other statements must be executed
20 by a partner or other person authorized by this chapter. The
21 statement must be in the English language. An individual who
22 executes a statement as or on behalf of a partner or other
23 person named as a partner in a statement shall state beneath
24 or opposite the person's signature the person's name and the
25 capacity in which the person signs. The execution of any

document required to be filed with the secretary of state under this chapter constitutes an affirmation under penalties of false swearing by each person executing the document that the facts stated are true.

(4) A person authorized by this chapter to file a statement may amend or cancel the statement by filing an amendment or cancellation that names the partnership, identifies the statement, and states the substance of the amendment or cancellation.

(5) A person who files a statement pursuant to this section shall promptly send a copy of the statement to every nonfiling partner and any other person named as a partner in the statement. Failure to send a copy of a statement to a partner or other person does not limit the effectiveness of the statement as to a person not a partner.

(6) The secretary of state shall establish by rule fees for filing statements, issuing certificates, copying statements, priority handling, transmitting or filing facsimile copies, and providing computer-generated information. The fees must be reasonably related to the costs of processing the statements and providing the services. The secretary of state shall maintain records sufficient to support the fees established under this section. The secretary of state may adopt rules necessary to perform any duty required of the secretary of state by this

chapter.

NEW SECTION. **Section 7. Facsimile filing** -- requirements -- liability. (1) The secretary of state shall treat a facsimile copy of a document that is required or permitted to be filed under this chapter and the signatures on the facsimile copy in the same manner as an original for purposes of this chapter provided that the secretary of state receives the original document within 5 working days of the receipt of the facsimile copy. If all other requirements are met, the date of filing relates back to the date of receipt of the facsimile copy.

(2) A facsimile copy is entitled to be filed under this section if it is:

(a) produced by a method of transmission of images in which the image is scanned at the transmitter; and

(b) legible and the same size as the original.

(3) During the 5-day period referred to in subsection (1), the recorded facsimile copy constitutes constructive notice for all purposes of the original document.

(4) If the original document is not received within 5 working days of receipt of the facsimile copy as provided in subsection (1), the filing of the facsimile copy is void.

(5) A person who files a false document by facsimile copy is liable to an aggrieved party for three times the amount of damages resulting from the filing of the false

1 document.

2 NEW SECTION. Section 8. Filing with secretary of
3 state. (1) The original signed copy, together with a
4 duplicate copy that may be either a signed, photocopied, or
5 confirmed copy, of any statement filed pursuant to this
6 chapter must be delivered to the secretary of state. If the
7 secretary of state determines that the documents conform to
8 the filing provisions of this chapter and all required
9 filing fees have been paid, the secretary of state shall:

10 (a) endorse on each signed original and duplicate copy
11 the word "filed" and the date and time of acceptance for
12 filing;

13 (b) retain the signed original in the secretary of
14 state's files; and

15 (c) return the duplicate copy to the person who filed
16 it or the person's representative.

17 (2) The secretary of state may by rule prescribe and
18 furnish forms or computer formats for any statement to be
19 filed with the secretary of state under this chapter. If the
20 secretary of state requires, the use of any forms or formats
21 is mandatory.

22 (3) All partnerships filing statements pursuant to this
23 chapter shall first register the business name as an assumed
24 business name pursuant to Title 30, chapter 13, part 2.

25 NEW SECTION. Section 9. Law governing internal

1 affairs. The law of the state in which a partnership has its
2 chief executive office governs the partnership's internal
3 affairs.

4 NEW SECTION. Section 10. Partnership subject to
5 amendment of repeal of chapter. A partnership governed by
6 this chapter is subject to any amendment or repeal of this
7 chapter.

8 **Section 11.** Section 35-10-201, MCA, is amended to read:

9 "35-10-201. Partnership defined as entity. {1} A
10 partnership is an ~~association of two or more persons to~~
11 ~~carry on as co-owners a business for profit~~ entity.

12 {2} ~~But any association formed under any other statute~~
13 ~~of this state or any statute adopted by authority other than~~
14 ~~the authority of this state is not a partnership under this~~
15 ~~chapter unless such association would have been a~~
16 ~~partnership in this state prior to the adoption of this~~
17 ~~chapter. But this chapter shall apply to limited~~
18 ~~partnerships except insofar as the statutes relating to such~~
19 ~~partnerships are inconsistent herewith."~~

20 **Section 12.** Section 35-10-202, MCA, is amended to read:

21 "35-10-202. Rules ~~for determining the existence~~
22 Creation of a partnership. ~~In determining whether a~~
23 ~~partnership exists, these rules shall apply:~~

24 (1) Except as provided by ~~35-10-300~~ in subsection (2),
25 the association of two or more persons who are not--partners

1 as--to--each--other--are-not-partners-as-to-third-persons to
 2 carry on as co-owners a business for profit creates a
 3 partnership, whether or not the persons intend to create a
 4 partnership.

5 (2) An association created under a statute other than
 6 this chapter, a predecessor law, or a comparable law of
 7 another jurisdiction is not a partnership.

8 (3) In determining whether a partnership is created,
 9 the following rules apply:

10 {2}(a) Joint tenancy, tenancy in common, tenancy by the
 11 entireties, joint property, common property, or part
 12 ownership does not of by itself establish a partnership,
 13 whether--such even if the co-owners do-or-do-not share any
 14 profits made by the use of the property.

15 {3}(b) The sharing of gross returns does not of by
 16 itself establish a partnership, whether-or-not even if the
 17 persons sharing them have a joint or common right or
 18 interest in any property from which the returns are derived.

19 {4}(c) The--receipt--by--a A person of who receives a
 20 share of the profits of a business is prima--facie--evidence
 21 that--such--person--is presumed to be a partner in the
 22 business, but-no-such--inference--shall--be--drawn--if--such
 23 unless the profits were received in payment:

24 {a}(i) as of a debt by installments or otherwise;

25 {b}(ii) as for services as an independent contractor or

1 of wages or other compensation of to an employee;

2 (iii) or of rent to-a-landlord;

3 {c}(iv) as of an annuity to or other retirement or
 4 health benefit to a beneficiary, surviving--spouse--or
 5 representative, or designee of a deceased or retired
 6 partner;

7 {d}(v) as of interest or of another charge on a loan,
 8 though even if the amount of payment varies with the profits
 9 of the business, including a direct or indirect present or
 10 future ownership of the collateral or rights to income,
 11 proceeds, or increase in value derived from the collateral;
 12 or

13 {e}(vi) as--the--consideration for the sale of a the
 14 goodwill of a business or other property by installments or
 15 otherwise.

16 (4) Except as provided by 35-10-308, persons who are
 17 not partners as to each other are not partners as to other
 18 persons.

19 (5) A partnership created under this chapter is a
 20 general partnership, and the partners are general partners
 21 of the partnership."

22 **Section 13.** Section 35-10-203, MCA, is amended to read:

23 "35-10-203. Partnership property. {1}--All--property
 24 originally--brought---into---the---partnership---stock---or
 25 subsequently-acquired-by-purchase Property transferred to or

1 otherwise on-account-of-the acquired by a partnership is
 2 partnership property of the partnership and not of the
 3 partners individually.

4 {2}--Unless-the--contrary--intention--appears--property
 5 acquired-with-partnership-funds-is-partnership-property--

6 {3}--Any--estate-in-real-property-may-be-acquired-in-the
 7 partnership-name--Title-so-acquired-can-be-conveyed-only--in
 8 the-partnership-name--

9 {4}--A--conveyance--to--a-partnership-in-the-partnership
 10 name--though-without-words-of-inheritance--passes-the-entire
 11 estate-of-the-grantor-unless-a-contrary-intent--appears--"

12 NEW SECTION. Section 14. When property is partnership
 13 property. (1) Property is partnership property if acquired
 14 in the name of:

15 (a) the partnership; or

16 (b) one or more partners with an indication in the
 17 instrument transferring title to the property of the
 18 person's capacity as a partner or of the existence of a
 19 partnership but without an indication of the name of the
 20 partnership.

21 (2) Property is acquired in the name of the partnership
 22 by a transfer to:

23 (a) the partnership in its name; or

24 (b) one or more partners in their capacity as partners
 25 in the partnership if the name of the partnership is

1 indicated in the instrument transferring title to the
 2 property.

3 (3) Property is presumed to be partnership property if
 4 purchased with partnership assets even if not acquired in
 5 the name of the partnership or of one or more partners with
 6 an indication in the instrument transferring title to the
 7 property of the person's capacity as a partner or of the
 8 existence of a partnership.

9 (4) Property acquired in the name of one or more of the
 10 partners without an indication in the instrument
 11 transferring title to the property of the person's capacity
 12 as a partner or of the existence of a partnership and
 13 without use of partnership assets is presumed to be separate
 14 property even if used for partnership purposes.

15 **Section 15.** Section 35-10-301, MCA, is amended to read:

16 "35-10-301. Partner as agent of partnership --
 17 restrictions-on-partner's-authority. Subject to the effect
 18 of a statement of partnership authority pursuant to [section
 19 17]:

20 (1) Every each partner is an agent of the partnership
 21 for the purpose of its business. and-the An act of every a
 22 partner, including the execution of an instrument in the
 23 partnership name of-any-instrument, for apparently carrying.
 24 on in the usual way the partnership business or business of
 25 the kind carried on by the partnership of-which-he-is-a

member binds the partnership unless the partner so acting has in fact no authority to act for the partnership in the particular matter and the person with whom he the partner is dealing has knowledge of the fact that he has no such knows or has received a notification that the partner lacks authority.

(2) An act of a partner which that is not apparently for the carrying on of the business of in the usual way the partnership in the usual way business or business of the kind carried on by the partnership does not bind binds the partnership unless only if the act was authorized by the other partners.

(3) Unless authorized by the other partners or unless they have abandoned the business, one or more but less than all the partners have no authority to:

(a) assign the partnership property in trust for creditors or on the assignee's promise to pay the debts of the partnership;

(b) dispose of the goodwill of the business;

(c) do any other act which would make it impossible to carry on the ordinary business of a partnership;

(d) confess a judgment;

(e) submit a partnership claim or liability to arbitration or reference;

(4) No act of a partner in contravention of a

restriction on authority shall bind the partnership to persons having knowledge of the restriction."

Section 16. Section 35-10-302, MCA, is amended to read:

"35-10-302. Conveyance of real Transfer of partnership property of the partnership. (1) Subject to the effect of a statement of partnership authority pursuant to [section 17]:

(a) Where title to real partnership property is held in the name of the partnership name, any partner may convey title to such property be transferred by a conveyance an instrument of transfer executed by a partner in the partnership name;

(b) partnership property held in the name of one or more partners with an indication in the instrument transferring the property to them of their capacity as partners or of the existence of a partnership, but without an indication of the name of the partnership, may be transferred by an instrument of transfer executed by the persons in whose name the property is held; and

(c) a partner, but the partnership may recover such property unless the partner's act binds transferred under this subsection if it proves that execution of the instrument of transfer did not bind the partnership under the provisions of 35-10-301(i) or unless such the property has been conveyed was transferred by the grantee initial transferee or a person claiming through such grantee the initial

1 transferee to a holder-for subsequent transferee who gave
2 value without knowledge having notice that the partner, in
3 making the conveyance, has exceeded his person who executed
4 the instrument of initial transfer lacked authority to bind
5 the partnership.

6 (2) Where title to real partnership property is held in
7 the name of one or more persons other than the partnership
8 a conveyance executed by a partner in his own name passes
9 the equitable interest of the partnership, provided the act
10 is one within the authority of the partner under the
11 provisions of 35-10-301(1) without an indication in the
12 instrument transferring the property to them of their
13 capacity as partners or of the existence of a partnership
14 may be transferred free of any claims of the partnership or
15 the partners by the persons in whose name the property is
16 held to a transferee who gives value without having notice
17 that it is partnership property.

18 (3) Where title to real property is in the name of one
19 or more but not all the partners and the record does not
20 disclose the right of the partnership, the partners in whose
21 name the title stands may convey title to such property, but
22 the partnership may recover such property if the partner's
23 act does not bind the partnership under the provisions of
24 35-10-301(1), unless the purchaser or his assignee is a
25 holder for value without knowledge.

1 (4) Where the title to real property is in the name of
2 one or more or all the partners or in a third person in
3 trust for the partnership, a conveyance executed by a
4 partner in the partnership name or in his own name passes
5 the equitable interest of the partnership, provided the act
6 is one within the authority of the partner under the
7 provisions of 35-10-301(1).

8 (5) Where the title to real property is in the names of
9 all the partners, a conveyance executed by all the partners
10 passes all their rights in such property; if a person holds
11 all of the partners' interests in the partnership, all of
12 the partnership property vests in that person. The person
13 may execute a document in the name of the partnership to
14 evidence vesting of the property in that person and may file
15 or record the document."

16 **NEW SECTION. Section 17. Statement of partnership**
17 **authority. (1) A partnership may file a statement of**
18 **partnership authority, which:**

19 (a) must include:

20 (i) the name of the partnership;

21 (ii) the street address of its chief executive office
22 and of one office in this state, if there is one;

23 (iii) the names and mailing addresses of all of the
24 partners or of an agent appointed and maintained by the
25 partnership for the purpose of subsection (2); and

1 (iv) the names of the partners authorized to execute an
2 instrument transferring real property held in the name of
3 the partnership; and

4 (b) may state the authority or limitations on the
5 authority of some or all of the partners to enter into other
6 transactions on behalf of the partnership and any other
7 matter.

8 (2) If a statement of partnership authority names an
9 agent, the agent shall maintain a list of the names and
10 mailing addresses of all the partners and make it available
11 to any person on request for good cause shown.

12 (3) If a filed statement of partnership authority is
13 executed pursuant to [section 6(5)] and states the name of
14 the partnership but does not contain all of the other
15 information required by subsection (1), the statement
16 nevertheless operates with respect to a person not a partner
17 as provided in subsections (4) and (5).

18 (4) Except as provided in subsection (7), a filed
19 statement of partnership authority supplements the authority
20 of a partner to enter into transactions on behalf of the
21 partnership as follows:

22 (a) Except for transfers of real property, a grant of
23 authority contained in a filed statement of partnership
24 authority is conclusive in favor of a person who gives value
25 without knowledge to the contrary so long as and to the

1 extent that a limitation on that authority is not contained
2 in another filed statement. A filed cancellation of a
3 limitation on authority revives the previous grant of
4 authority.

5 (b) A grant of authority to transfer real property held
6 in the name of the partnership contained in a certified copy
7 of a filed statement of partnership authority recorded in
8 the office for recording transfers of that real property is
9 conclusive in favor of a person who gives value without
10 knowledge to the contrary so long as and to the extent that
11 a certified copy of a filed statement containing a
12 limitation on that authority is not then of record in the
13 office for recording transfers of that real property. The
14 recording in the office for recording transfers of that real
15 property of a certified copy of a filed cancellation of a
16 limitation on authority revives the previous grant of
17 authority.

18 (5) A person not a partner is considered to know of a
19 limitation on the authority of a partner to transfer real
20 property held in the name of the partnership if a certified
21 copy of the filed statement containing the limitation on
22 authority is of record in the office for recording transfers
23 of that real property.

24 (6) Except as provided in [sections 42 and 49] and
25 subsection (5) of this section, a person not a partner is

not considered to know of a limitation on the authority of a partner merely because the limitation is contained in a filed statement.

(7) Unless canceled earlier, a filed statement of partnership authority is canceled by operation of law 5 years after the date on which the statement or the most recent amendment was filed with the secretary of state.

NEW SECTION. Section 18. Statement of denial. A partner or other person named as a partner in a filed statement of partnership authority or in a list maintained by an agent pursuant to [section 17(2)] may file a statement of denial stating the name of the partnership and the fact that is being denied, which may include denial of a person's authority or status as a partner. A statement of denial is a limitation on authority to the extent provided in [section 17(4) and (5)].

Section 19. Section 35-10-305, MCA, is amended to read:

"35-10-305. Partnership liable for partner's wrongful act actionable conduct. (1) Where, by any A partnership is liable for loss or injury caused to a person, or for a penalty incurred, as a result of a wrongful act or omission or other actionable conduct of any a partner acting in the ordinary course of the business of the partnership or with the authority of his-copartners, loss-or-injury-is-caused-to any-person-not-being-a-partner-in the partnership or-any

~~penalty-is-incurred, the partnership-is-liable--therefor--to the-same-extent-as-the-partner-so-acting-or-omitting-to-act.~~

(2) If, in the course of its business, a partnership receives money or property of a person not a partner and that money or property is misapplied by a partner while it is in the custody of the partnership, the partnership is liable for the loss."

Section 20. Section 35-10-307, MCA, is amended to read:

"35-10-307. ~~Nature--of--partner's~~ Partner's liability.

All partners are liable:

(1) ~~jointly and severally for everything-chargeable--to the-partnership-under-35-10-305-and-35-10-306;~~

(2) ~~--jointly--for all other-debts-and obligations of the partnership, but-any--partner--may--enter--into--a--separate obligation---to---perform---a--partnership--contract unless otherwise agreed by the claimant or provided by law."~~

NEW SECTION. Section 21. Action by and against partnership and partners. (1) A partnership may sue and be sued in the name of the partnership.

(2) An action may be brought against the partnership and any or all of the partners in the same action or in separate actions.

(3) A judgment against a partnership is not by itself a judgment against a partner. A judgment against a partnership may not be satisfied from a partner's assets unless there is

1 also a judgment against the partner.

2 (4) A judgment creditor of a partner may not levy
3 execution against the assets of the partner to satisfy a
4 judgment based on a claim against the partnership unless:

5 (a) a judgment based on the same claim has been
6 obtained against the partnership and a writ of execution on
7 the judgment has been returned unsatisfied in whole or in
8 part;

9 (b) an involuntary case under Title 11 of the United
10 States Code has been commenced against the partnership and
11 has not been dismissed within 60 days after commencement or
12 the partnership has commenced a voluntary case under Title
13 11 of the United States Code and the case has not been
14 dismissed;

15 (c) the partner has agreed that the creditor need not
16 exhaust partnership assets;

17 (d) a court grants permission to the judgment creditor
18 to levy execution against the assets of a partner based on a
19 finding that partnership assets subject to execution within
20 this state are clearly insufficient to satisfy the judgment,
21 that exhaustion of partnership assets is excessively
22 burdensome, or that the grant of permission is an
23 appropriate exercise of the court's equitable powers; or

24 (e) liability is imposed on the partner by law or
25 contract independent of the existence of the partnership.

1 (5) This section applies to any partnership liability
2 or obligation resulting from a representation by a partner
3 or purported partner under 35-10-308(1) or (2).

4 **Section 22.** Section 35-10-308, MCA, is amended to read:

5 *35-10-308. Partner--by-estoppel; Purported partner. (1)
6 When If a person, by words spoken-or-written or by conduct,
7 represents--himself purports to be a partner or consents to
8 being represented by another representing-him-to-anyone as a
9 partner in an-existing a partnership or with one or more
10 persons not actual partners, he the purported partner is
11 liable to any-such a person to whom such the representation
12 has--been is made if that person, who-has relying on the
13 faith-of-such representation, given-credit-to enters into a
14 transaction with the actual or apparent purported
15 partnership, --and--if--he---has---made---such If the
16 representation, or--consented--to--its--being either by the
17 purported partner or by a person with the purported
18 partner's consent, is made in a public manner, he the
19 purported partner is liable to such a person--whether--the
20 representation--has--or-has-not-been-made-or-communicated-to
21 such-person-so-giving-credit-by-or-with-the-knowledge-of-the
22 apparent-partner-making-the-representation-or-consenting--to
23 its--being--made who relies upon the purported partnership
24 even if the purported partner is not aware of being held out
25 as a partner to the claimant. When--a If partnership

liability results, he the purported partner is liable as though--he if the purported partner were an-actual-member-of the-partnership a partner. When If no partnership liability results, he the purported partner is liable jointly and severally with the any other persons,--if--any,--so person consenting to the contract--or representation as-to-incure liability,--otherwise-separately.

(2) When If a person has-been is thus represented to be a partner in an existing partnership or with one or more persons not actual partners, he the purported partner is an agent of the persons consenting to such the representation to bind them to the same extent and in the same manner as though--he if the purported partner were a partner in--fact, with respect to persons who rely enter into transactions in reliance upon the representation. Where If all of the members partners of the existing partnership consent to the representation, a partnership act or obligation results. 7 but--in-all-other-cases-it-is-the-joint-act-or-obligation-of the-person-acting-and-the-persons-consenting If fewer than all of the partners of the existing partnership consent to the representation, the person acting and the partners consenting to the representation are jointly and severally liable.

(3) A person is not a partner in a partnership merely because the person is named by another in a statement of

partnership authority.

(4) A person does not continue to be a partner merely because of a failure to file a statement of dissociation or to amend a statement of partnership authority to indicate the partner's dissociation from the partnership."

Section 23. Section 35-10-309, MCA, is amended to read:

"35-10-309. Liability of incoming partner. A person admitted as a partner into an--existing a partnership is liable for all the obligations of the partnership arising incurred before his the person's admission as though--he--had been if the person were a partner when such the obligations were incurred, except-that-this but the liability shall may be satisfied only out of partnership property."

Section 24. Section 35-10-401, MCA, is amended to read:

"35-10-401. Rules---determining Partner's rights and duties of-partners. The-rights-and-duties-of-the-partners-in relation-to-the-partnership-shall-be-determined,--subject--to any-agreement-between-them,--by-the-following-rules:

(1) Each A partnership shall establish an account for each partner. shall-be-repaid-his-contributions--whether--by way--of-capital-or-advances The partnership shall credit the account with an amount equal to the money plus the value of any other property, net of the amount of any liabilities, that the partner contributes to the partnership property and the partner's share equally--in--the of the partnership

profits. ~~and--surplus--remaining--after--all--liabilities,~~
~~including--those--to--partners,--are--satisfied--and--must~~
~~contribute--towards--the~~ The partnership shall charge the
account with an amount equal to the money plus the value of
any other property, net of the amount of any liabilities,
distributed by the partnership to the partner and the
partner's share of the partnership losses.

(2) A partnership shall credit each partner's account
with an equal share of the partnership profits. A
partnership shall charge each partner with a share of the
partnership losses, whether of capital or otherwise
operating, sustained-by-the-partnership-according-to-his in
proportion to the partner's share in of the profits.

(2)(3) The A partnership must shall indemnify every
each partner in-respect-of for payments reasonably made and
personal liabilities reasonably incurred by him the partner
in the ordinary and proper conduct of its the business of
the partnership or for the preservation of its business or
property.

(3)(4) A partnership shall repay a partner who, in aid
of the partnership, makes any a payment or advance beyond
the amount of capital which--he the partner agreed to
contribute shall-be-paid--interest--from--the--date--of--the
payment-or-advance.

(4)(5) A payment made by a partner shall--receive

interest--on--the-capital-contributed-by-him-only that gives
rise to a partnership obligation under subsection (3) or (4)
constitutes a loan to the partnership. Interest accrues from
the date when-repayment-should-be-made of the payment or
advance.

(5)(6) All--partners-have Each partner has equal rights
in the management and conduct of the partnership business.

(7) A partner may use or possess partnership property
only on behalf of the partnership.

(6)(8) No A partner is not entitled to remuneration for
acting--in services performed for the partnership business,
except that--a--surviving--partner--is--entitled--to for
reasonable compensation for his services rendered in winding
up the business of the partnership affairs.

(7)(9) No A person can may become a member--of-a
partnership-without partner only with the consent of all the
partners.

(8)(10) Any A difference arising as to a matter in the
ordinary matters-connected-with-the course of business of a
partnership business may be decided by a majority of the
partners. 7--but--no An act in-contravention-of-any outside
the ordinary course of business of a partnership and an
amendment to the partnership agreement between-the-partners
may be done-rightfully--without undertaken only with the
consent of all the partners.

(11) This section does not affect the obligations of a partnership to other persons under 35-10-301."

NEW SECTION. Section 25. Distributions in kind. A partner has no right to receive and may not be required to accept a distribution in kind.

Section 26. Section 35-10-402, MCA, is amended to read:

"35-10-402. Partnership--books-----inspection---rights Partner's right to information. (1) The partnership books A partnership shall be kept, subject to any agreement between the partners, at the principal place of business of the partnership, and keep its books and records, if any, at its chief executive office.

(2) A partnership every partner shall at all times have provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to and may inspect and copy any of them books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished."

Section 27. Section 35-10-403, MCA, is amended to read:

"35-10-403. Duty of partners to render information. Partners--shall--render Each partner and the partnership, on

demand, shall furnish true--and--full--information--of--all things--affecting-the-partnership to any a partner or and to the legal representative of any a deceased partner or of a partner under legal disability, to the extent just and reasonable, complete and accurate information concerning the partnership."

Section 28. Section 35-10-405, MCA, is amended to read:

"35-10-405. Partner--accountable--as--a--fiduciary--for benefit--derived--without--consent General standards of partner's conduct. (1) The only fiduciary duties a partner owes to the partnership and the other partners are the duty of loyalty and the duty of care set forth in this section.

(i)(2) Every--partner--must A partner's duty of loyalty to the partnership and the other partners is limited to the following:

(a) to account to the partnership for--any--benefit and hold as trustee for it any profits property, profit, or benefit derived:

(i) by him--without--the-consent-of-the-other-partners from--any--transaction--connected--with--the--formation, the partner in the conduct, or liquidation and winding up of the partnership business; or

(ii) from any a use or appropriation by him the partner of its partnership property; or

(iii) from a use or appropriation of an opportunity

1 without the consent of the other partners;

2 (b) to refrain from dealing with the partnership in the
3 conduct or winding up of the partnership business as or on
4 behalf of a party having an interest adverse to the
5 partnership without the consent of the other partners; and

6 (c) to refrain from competing with the partnership in
7 the conduct of partnership business before the dissolution
8 of the partnership without the consent of the other
9 partners.

10 (3) A partner's duty of loyalty may not be eliminated
11 by agreement, but the partners by agreement may identify
12 specific types or categories of activities that do not
13 violate the duty of loyalty, if not manifestly unreasonable.

14 (4) A partner's duty of care to the partnership and the
15 other partners in the conduct and winding up of the
16 partnership business is limited to refraining from engaging
17 in grossly negligent or reckless conduct, intentional
18 misconduct, or a knowing violation of law.

19 (5) A partner shall discharge the duties to the
20 partnership and the other partners under this chapter or
21 under the partnership agreement and exercise any rights
22 consistent with the obligation of good faith and fair
23 dealing. The obligation of good faith and fair dealing may
24 not be eliminated by agreement, but the partners by
25 agreement may determine the standards by which the

1 performance of the obligation is to be measured if the
2 standards are not manifestly unreasonable.

3 (6) A partner does not violate a duty or obligation
4 under this chapter or under the partnership agreement merely
5 because the partner's conduct furthers the partner's own
6 interest. A partner may lend money to and transact other
7 business with the partnership. The rights and obligations of
8 a partner who lends money to or transacts business with the
9 partnership are the same as those of a person who is not a
10 partner, subject to other applicable law.

11 (2)(7) This section applies also to the--representatives
12 of--a--deceased--partner--engaged--in--the--liquidation--of--the
13 affairs--of a person winding up the partnership business as
14 the personal representatives or legal representative of the
15 last surviving partner as if the person were a partner."

16 NEW SECTION. Section 29. Partner's liability to
17 partnership. A partner is liable to the partnership for a
18 breach of the partnership agreement if there is a violation
19 of a duty to the partnership that causes harm to the
20 partnership.

21 NEW SECTION. Section 30. Remedies of partnership and
22 partners. (1) A partnership may maintain an action against a
23 partner for a breach of the partnership agreement or for the
24 violation of a duty to the partnership that causes harm to
25 the partnership.

(2) A partner may maintain an action against the partnership or another partner for legal or equitable relief, including an accounting as to partnership business, to enforce:

(a) a right under the partnership agreement;

(b) a right under this chapter, including the partner's:

(i) rights under 35-10-401 through 35-10-403 and 35-10-405;

(ii) right on dissociation to have the partner's interest in the partnership purchased pursuant to [section 39] or enforce any other right under [sections 36 through 38] or [sections 39 through 43]; or

(iii) right to compel a dissolution and winding up of the partnership business under [section 44] or enforce any other right under [sections 44 and 45], 35-10-602, 35-10-609, and [sections 48 through 51]; or

(c) the rights and otherwise protect the interests of the partner, including rights and interests arising independent of the partnership relationship.

(3) The accrual of and any time limitation on a right of action for a remedy under this section is governed by other law. A right to an accounting upon a dissolution and winding up does not revive a claim barred by law.

Section 31. Section 35-10-406, MCA, is amended to read:

"35-10-406. Rights---and---duties---of---partners---when Continuation of partnership continues beyond fixed definite term or particular undertaking. (1) When If a partnership for a fixed definite term or particular undertaking is continued without an express agreement after the termination of-such expiration of the term or particular completion of the undertaking without--any-express-agreement, the rights and duties of the partners remain the same as they were at such--termination the expiration or completion, so far as is consistent with a partnership at will.

(2) A-continuation-of-the-business-by If the partners or such those of them as who habitually acted therein in the business during the term or undertaking continue the business without any settlement or liquidation of the partnership, affairs is--prima---facie---evidence---of---a continuation--of--the--partnership they are presumed to have agreed that the business will not be wound up."

NEW SECTION. Section 32. Partner's interest in partnership property not transferable. A partner is not a co-owner of partnership property and has no interest in partnership property that can be transferred either voluntarily or involuntarily.

NEW SECTION. Section 33. Partner's transferable interest in partnership. The only transferable interest of a partner in the partnership is the partner's interest in

distributions. The interest is personal property.

NEW SECTION. Section 34. Transfer of partner's transferable interest. (1) A transfer, in whole or in part, of a partner's transferable interest in the partnership:

(a) is permissible;

(b) does not by itself cause a dissolution and winding up of the partnership business; and

(c) does not, as against the other partners or the partnership, entitle the transferee, during the continuance of the partnership, to participate in the management or conduct of the partnership business, to require access to information concerning or an account of partnership transactions, or to inspect or copy the partnership books or records.

(2) A transferee of a partner's transferable interest in the partnership has a right:

(a) to receive, in accordance with the transfer, distributions to which the transferor would otherwise be entitled;

(b) to receive the net amount otherwise distributable to the transferor upon the dissolution and winding up of the partnership business; and

(c) to seek under [section 44(6)] a judicial determination that it is equitable to wind up the partnership business.

(3) In a dissolution and winding up, a transferee is entitled to receive an accounting only from the date of the last account agreed to by all of the partners.

(4) Upon transfer, the transferor retains the rights and duties of a partner other than the interest in distributions transferred.

(5) Until receipt of notice of a transfer, a partnership has no duty to give effect to the transferee's rights under this section.

Section 35. Section 35-10-505, MCA, is amended to read:

"35-10-505. Partner's transferable interest subject to charging order. (1) On due application to-a-competent--court by any a judgment creditor of a partner or partner's transferee, the a court which-entered-the--judgment--order, or--decree-or-any-other-court having jurisdiction may charge the transferable interest of the debtor partner with-payment of-the-unsatisfied-amount-of-such or transferee to satisfy the judgment. debt-with-interest-thereon-and The court may then-or-later appoint a receiver of his the debtor's share of the profits-and-of-any-other-money distributions due or to fail become due to him the debtor in respect of the partnership and make all other orders, directions, accounts, and inquiries which the debtor partner might have made or which the circumstances of the case may require.

(2) A charging order constitutes a lien on the judgment

debtor's transferable interest in the partnership. The court may order a foreclosure of the interest subject to the charging order at any time and upon conditions it considers appropriate. The purchaser at the foreclosure sale has the rights of a transferee.

~~(2)~~(3) The At any time before foreclosure, an interest charged may be redeemed ~~at any time before--foreclosure--or, in--case--of--a--sale--being--directed--by--the--court,--may--be purchased--without--thereby--causing--a--dissolution:~~

(a) by the judgment debtor;

~~(a)~~(b) with separate property other than partnership property, by any one or more of the other partners; or

~~(b)~~(c) with partnership property, by any one or more of the other partners with the consent of all the partners whose interests are not so charged ~~or sold.~~

~~(3)~~(4) Nothing-in-this This chapter shall--be--held--to does not deprive a partner of his a right,--if--any, under the exemption laws as-regards-his with respect to the partner's interest in the partnership.

(5) This section provides the exclusive remedy by which a judgment creditor of a partner or partner's transferee may satisfy a judgment out of the judgment debtor's transferable interest in the partnership."

NEW SECTION. Section 36. Events causing partner's dissociation. A partner is dissociated from a partnership

upon:

(1) receipt by the partnership of notice of the partner's express will to withdraw as a partner or upon any later date specified in the notice;

(2) an event agreed to in the partnership agreement as causing the partner's dissociation;

(3) the partner's expulsion pursuant to the partnership agreement;

(4) the partner's expulsion by the unanimous vote of the other partners if:

(a) it is unlawful to carry on the partnership business with that partner;

(b) there has been a transfer of all or substantially all of that partner's transferable interest in the partnership, other than a transfer for security purposes or a court order charging the partner's interest that has not been foreclosed;

(c) within 90 days after the partnership notifies a corporate partner that it will be expelled because it has filed a certificate of dissolution or the equivalent, its charter has been revoked, or its right to conduct business has been suspended by the jurisdiction of its incorporation, there is no revocation of the certificate of dissolution or no reinstatement of its charter or its right to conduct business; or

1 (d) a partnership that is a partner has been dissolved
2 and its business is being wound up;

3 (5) the partner's expulsion by judicial decree, made on
4 application by the partnership or another partner, because:

5 (a) the partner engaged in wrongful conduct that
6 adversely and materially affected the partnership business;

7 (b) the partner willfully or persistently committed a
8 material breach of the partnership agreement or of a duty
9 owed to the partnership or the other partners under
10 35-10-405; or

11 (c) the partner engaged in conduct relating to the
12 partnership business that made it not reasonably practicable
13 to carry on the business in partnership with that partner;

14 (6) the partner:

15 (a) becoming a debtor in bankruptcy;

16 (b) executing an assignment for the benefit of
17 creditors;

18 (c) seeking, consenting to, or acquiescing in the
19 appointment of a trustee, receiver, or liquidator of that
20 partner or of all or substantially all of that partner's
21 property; or

22 (d) failing within 90 days after the appointment to
23 have vacated or stayed the appointment of a trustee,
24 receiver, or liquidator of the partner or of all or
25 substantially all of the partner's property obtained without

1 the partner's consent or acquiescence or failing within 90
2 days after the expiration of a stay to have the appointment
3 vacated;

4 (7) in the case of a partner who is an individual:

5 (a) the partner's death;

6 (b) the appointment of a guardian or general
7 conservator for the partner; or

8 (c) a judicial determination that the partner has
9 otherwise become incapable of performing the partner's
10 duties under the partnership agreement;

11 (8) in the case of a partner that is a trust or is
12 acting as a partner by virtue of being a trustee of a trust,
13 distribution of the trust's entire transferable interest in
14 the partnership, but not merely by reason of the
15 substitution of a successor trustee;

16 (9) in the case of a partner that is an estate or is
17 acting as a partner by virtue of being a personal
18 representative of an estate, distribution of the estate's
19 entire transferable interest in the partnership, but not
20 merely by reason of the substitution of a successor personal
21 representative; or

22 (10) termination of a partner who is not an individual,
23 partnership, corporation, trust, or estate.

24 NEW SECTION. **Section 37.** Partner's wrongful
25 dissociation. (1) A partner's dissociation is wrongful only

1 if:

2 (a) it is in breach of an express provision of the

3 partnership agreement; or

4 (b) in the case of a partnership for a definite term or

5 particular undertaking, before the expiration of the term or

6 the completion of the undertaking:

7 (i) the partner withdraws by express will, unless the

8 withdrawal follows the dissociation of another partner and

9 results in a right to dissolve the partnership under

10 [section 44(2)(a)];

11 (ii) the partner is expelled by judicial decree under

12 [section 36(5)]; or

13 (iii) a partner, who is not an individual, a trust other

14 than a business trust, or an estate, is expelled or

15 otherwise dissociated because the entity willfully dissolved

16 or terminated.

17 (2) A partner who wrongfully dissociates is liable to

18 the partnership and to the other partners for damages caused

19 by the dissociation. That liability is in addition to any

20 other liability of the partner to the partnership or to the

21 other partners.

22 **NEW SECTION. Section 38. Effect of partner's**

23 **dissociation.** (1) If a partner's dissociation results in a

24 dissolution and winding up of the partnership business,

25 [sections 44 and 45], 35-10-602, 35-10-609, and [sections 48

1 through 51] apply; otherwise [sections 39 through 43] apply.

2 (2) Upon a partner's dissociation:

3 (a) the partner's right to participate in the

4 management and conduct of the partnership business

5 terminates, except as provided in 35-10-609;

6 (b) the partner's duty of loyalty under 35-10-405(2)(c)

7 terminates; and

8 (c) the partner's duty of loyalty under 35-10-405(2)(a)

9 and (2)(b) and duty of care under 35-10-405(4) continue only

10 with regard to matters arising or events occurring before

11 the dissociation.

12 **NEW SECTION. Section 39. Purchase of dissociated**

13 **partner's interest.** (1) If a partner is dissociated from a

14 partnership without resulting in a dissolution and winding

15 up of the partnership business under [section 44], the

16 partnership shall cause the dissociated partner's interest

17 in the partnership to be purchased for a buyout price

18 determined pursuant to subsection (2).

19 (2) (a) The buyout price of a dissociated partner's

20 interest is the amount that would have been distributable to

21 the dissociating partner under [section 51(2)] if on the

22 date of dissociation the assets of the partnership were sold

23 at a price equal to the greater of:

24 (i) the liquidation value; or

25 (ii) the value based on a sale of the entire business as

1 a going concern without the dissociated partner and the
2 partnership were wound up as of that date.

3 (b) In either case, the selling price of the
4 partnership assets must be determined on the basis of the
5 amount that would be paid by a willing buyer to a willing
6 seller, neither being under any compulsion to buy or sell,
7 and with knowledge of all relevant facts. Interest must be
8 paid from the date of dissociation to the date of payment.

9 (3) Damages for wrongful dissociation under [section
10 37(2)] and all other amounts owing, whether or not presently
11 due, from the dissociated partner to the partnership must be
12 offset against the buyout price. Interest must be paid from
13 the date the amount owed becomes due to the date of payment.

14 (4) A partnership shall indemnify a dissociated partner
15 against all partnership liabilities incurred before the
16 dissociation, except liabilities then unknown to the
17 partnership, and against all partnership liabilities
18 incurred after the dissociation, except liabilities incurred
19 by an act of the dissociated partner under [section 40]. For
20 purposes of this subsection, a liability not known to a
21 partner other than the dissociated partner is not known to
22 the partnership.

23 (5) If no agreement for the purchase of a dissociated
24 partner's interest is reached within 120 days after a
25 written demand for payment, the partnership shall pay or

1 cause to be paid in cash to the dissociated partner the
2 amount the partnership estimates to be the buyout price and
3 accrued interest, reduced by any offsets and accrued
4 interest under subsection (3).

5 (6) If a deferred payment is authorized under
6 subsection (8), the partnership may tender a written offer
7 to pay the amount it estimates to be the buyout price and
8 accrued interest, reduced by any offsets under subsection
9 (3), stating the time of payment, the amount and type of
10 security for payment, and the other terms and conditions of
11 the obligation.

12 (7) The payment or tender required by subsection (5) or
13 (6) must be accompanied by the following:

14 (a) a statement of partnership assets and liabilities
15 as of the date of dissociation;

16 (b) the latest available partnership balance sheet and
17 income statement, if any;

18 (c) an explanation of how the estimated amount of the
19 payment was calculated; and

20 (d) written notice that the payment is in full
21 satisfaction of the obligation to purchase unless, within
22 120 days after the written notice, the dissociated partner
23 commences an action to determine the buyout price, any
24 offsets under subsection (3), or other terms of the
25 obligation to purchase.

1 (8) A partner who wrongfully dissociates before the
 2 expiration of a definite term or the completion of a
 3 particular undertaking is not entitled to payment of any
 4 portion of the buyout price until the expiration of the term
 5 or completion of the undertaking unless the partner
 6 establishes to the satisfaction of the court that earlier
 7 payment will not cause undue hardship to the business of the
 8 partnership. A deferred payment must be adequately secured
 9 and bear interest.

10 (9) A dissociated partner may maintain an action
 11 against the partnership, pursuant to [section 30(2)(b)(ii)],
 12 to determine the buyout price of that partner's interest,
 13 any offsets under subsection (3), or other terms of the
 14 obligation to purchase. The action must be commenced within
 15 120 days after the partnership has tendered payment or an
 16 offer to pay or within 1 year after written demand for
 17 payment if no payment or offer to pay is tendered. The court
 18 shall determine the buyout price of the dissociated
 19 partner's interest, any offset due under subsection (3), and
 20 accrued interest, and enter judgment for any additional
 21 payment or refund. If deferred payment is authorized under
 22 subsection (8), the court shall also determine the security
 23 for payment and other terms of the obligation to purchase.
 24 The court may assess reasonable attorney fees and the fees
 25 and expenses of appraisers or other experts for a party to

1 the action, in amounts the court finds equitable, against a
 2 party that the court finds acted arbitrarily, vexatiously,
 3 or not in good faith. The finding may be based on the
 4 partnership's failure to tender payment or an offer to pay
 5 or to comply with the requirements of subsection (7).

6 NEW SECTION. **Section 40. Dissociated partner's power**
 7 **to bind partnership -- liability to partnership.** (1) For 2
 8 years after a partner dissociates without resulting in a
 9 dissolution and winding up of the partnership business, the
 10 partnership, including a surviving partnership under
 11 [sections 52 through 58], is bound by an act of the
 12 dissociated partner that would have bound the partnership
 13 under 35-10-301 before dissociation if the other party to
 14 the transaction:

15 (a) reasonably believed when entering the transaction
 16 that the dissociated partner was a partner at that time;

17 (b) did not have notice of the partner's dissociation;
 18 and

19 (c) is not considered to have had knowledge under
 20 [section 17(5)] or notice under [section 42].

21 (2) A dissociated partner is liable to the partnership
 22 for any loss caused to the partnership arising from an
 23 obligation incurred by the dissociated partner after
 24 dissociation and for which the partnership is liable under
 25 subsection (1).

NEW SECTION. Section 41. Dissociated partner's

liability to other persons. (1) A partner's dissociation does not of itself discharge the partner's liability for a partnership obligation incurred before dissociation. A dissociated partner is not liable for a partnership obligation incurred after dissociation except as provided in subsection (2).

(2) A partner who dissociates without resulting in a dissolution and winding up of the partnership business is liable as a partner to the other party in a transaction entered into by the partnership or a surviving partnership under [sections 52 through 58] within 2 years after the partner's dissociation only if the other party to the transaction:

(a) reasonably believed when entering the transaction that the dissociated partner was a partner at that time;

(b) did not have notice of the partner's dissociation; and

(c) is not considered to have had knowledge under [section 17(5)] or notice under [section 42].

(3) By agreement with the partnership creditor and the partners continuing the business, a dissociated partner may be released from liability for a partnership obligation.

(4) A dissociated partner is released from liability for a partnership obligation if a partnership creditor, with

notice of the partner's dissociation but without the partner's consent, agrees to a material alteration in the nature or time of payment of a partnership obligation.

NEW SECTION. Section 42. Statement of dissociation.

(1) A dissociated partner or the partnership may file a statement of dissociation stating the name of the partnership and that the partner is dissociated from the partnership.

(2) A statement of dissociation is a limitation on the authority of a dissociated partner for the purposes of [section 17(4) and (5)].

(3) For the purposes of 35-10-301 and [sections 40 and 41(2)], a person not a partner is considered to have notice of the dissociation 90 days after the statement of dissociation is filed.

NEW SECTION. Section 43. Continued use of partnership

name. Continued use of a partnership name or a dissociated partner's name as part of the partnership by the partners continuing the business does not of itself make the dissociated partner liable for an obligation of the partners or the partnership continuing the business.

NEW SECTION. Section 44. Events causing dissolution

and winding up of partnership business. Except as provided in [section 45], a partnership is dissolved and its business must be wound up only upon:

1 (1) receipt by a partnership at will of notice from a
 2 partner, other than a partner who is dissociated under
 3 [section 36(2) through (10)], of that partner's express will
 4 to withdraw as a partner or upon any later date specified in
 5 the notice;

6 (2) in a partnership for a definite term or particular
 7 undertaking;

8 (a) within 90 days after a partner's wrongful
 9 dissociation under [section 37] or a partner's dissociation
 10 by death or otherwise under [section 36(6) through (10)],
 11 receipt by the partnership of notice from another partner of
 12 that partner's express will to withdraw as a partner;

13 (b) the express will of all the partners; or

14 (c) the expiration of the term or the completion of the
 15 undertaking unless all the partners agree to continue the
 16 business, in which case the partnership agreement is
 17 considered amended retroactively to provide that the
 18 expiration or completion does not result in the dissolution
 19 and winding up of the partnership business;

20 (3) an event agreed to in the partnership agreement
 21 resulting in the winding up of the partnership business
 22 unless all the partners agree to continue the business, in
 23 which case the partnership agreement is considered amended
 24 retroactively to provide that the event does not result in
 25 the dissolution and winding up of the partnership business;

1 (4) an event that makes it unlawful for all or
 2 substantially all of the business of the partnership to be
 3 continued, but a cure of illegality within 90 days after
 4 notice to the partnership of the event is effective
 5 retroactively to the date of the event for purposes of this
 6 section;

7 (5) a judicial decree, issued upon application by a
 8 partner, that:

9 (a) the economic purpose of the partnership is likely
 10 to be unreasonably frustrated;

11 (b) another partner has engaged in conduct relating to
 12 the partnership business that makes it not reasonably
 13 practicable to carry on the business in partnership with
 14 that partner; or

15 (c) it is not otherwise reasonably practicable to carry
 16 on the partnership business in conformity with the
 17 partnership agreement; or

18 (6) a judicial decree, issued upon application by a
 19 transferee of a partner's transferable interest, that it is
 20 equitable to wind up the partnership business;

21 (a) if the partnership was for a definite term or
 22 particular undertaking at the time of the transfer or entry
 23 of the charging order that gave rise to the transfer, after
 24 the expiration of the term or completion of the undertaking;
 25 or

(b) if the partnership was a partnership at will at the time of the transfer or entry of the charging order that gave rise to the transfer, at any time.

NEW SECTION. Section 45. Dissolution deferred ninety days. (1) Except as provided in subsection (2), a partnership of more than two persons is not dissolved until 90 days after receipt by the partnership of notice from a partner under [section 44(1) or (2)(a)], and its business may be continued until that date as if no notice were received. Before that date, the partner who gave the notice may waive the right to have the partnership business wound up. If there is no waiver before that date, the partnership is dissolved and its business must be wound up.

(2) A partnership may be dissolved at any time during the 90-day period and its business wound up, by the express will of at least half of the other partners.

(3) After receipt by the partnership of notice from a partner under [section 44(1) or (2)(a)], the partner who gave the notice:

(a) has no rights in the management and conduct of the partnership business if it is continued under subsection (1) but may participate in winding up the business under 35-10-609 if the partnership is dissolved on or before the expiration of the 90-day period pursuant to subsection (1) or (2);

(b) is liable for obligations incurred during the period only to the extent a dissociated partner would be liable under [section 40(2) or 41(2)] but is not liable for contributions for and must be indemnified by the other partners against any partnership liability incurred by another partner to the extent the liability is not appropriate for winding up the partnership business; and

(c) must be credited with the partner's share of any profit earned during the period and may be charged with the partner's share of any loss incurred during the period but only to the extent of profits credited for the period.

Section 46. Section 35-10-602, MCA, is amended to read:

"35-10-602. Partnership not--terminated--by continues after dissolution. On-dissolution-the A partnership is-not terminated-but continues after dissolution until the winding up of partnership-affairs its business is completed, at which time the partnership is terminated."

Section 47. Section 35-10-609, MCA, is amended to read:

"35-10-609. Right to wind up partnership business. (1) Unless-otherwise-agreed,-the-partners After dissolution, a partner who have has not wrongfully dissolved--the partnership--or--the--legal--representative--of---the---last surviving--partner,--not--bankrupt,--has--the--right-to-wind dissociated may participate in winding up the--partnership affairs the partnership's business, but on application of-

1 However, any partner, his partner's legal representative, or
 2 his-assignee transferee, the district court, upon for good
 3 cause shown, may obtain order judicial supervision of the
 4 winding up by-the-court.

5 (2) The legal representative of the last surviving
 6 partner may wind up a partnership's business.

7 (3) A person winding up a partnership's business may
 8 preserve the partnership business or property as a going
 9 concern for a reasonable time; prosecute and defend actions
 10 and proceedings, whether civil, criminal, or administrative;
 11 settle and close the partnership's business; dispose of and
 12 transfer the partnership's property; discharge the
 13 partnership's liabilities; distribute the assets of the
 14 partnership pursuant to [section 51]; settle disputes by
 15 mediation or arbitration; and perform other necessary acts."

16 **NEW SECTION. Section 48.** Partner's power to bind
 17 partnership after dissolution. Subject to [section 49], a
 18 partnership is bound by a partner's act after dissolution
 19 that:

20 (1) is appropriate for winding up the partnership
 21 business; or

22 (2) would have bound the partnership under 35-10-301
 23 before dissolution if the other party to the transaction did
 24 not have notice of the dissolution.

25 **NEW SECTION. Section 49.** Statement of dissolution. (1)

1 After dissolution, a partner who has not wrongfully
 2 dissociated may file a statement of dissolution stating the
 3 name of the partnership and that the partnership has
 4 dissolved and is winding up its business.

5 (2) A statement of dissolution cancels a filed
 6 statement of partnership authority for the purposes of
 7 [section 17(4)] and is a limitation on authority for the
 8 purposes of [section 17(5)].

9 (3) For the purposes of 35-10-301 and [section 48], a
 10 person not a partner is considered to have notice of the
 11 dissolution and the limitation on the partners' authority as
 12 a result of the statement of dissolution 90 days after it is
 13 filed.

14 (4) After filing and, if appropriate, recording a
 15 statement of dissolution, the dissolved partnership may file
 16 and, if appropriate, record a statement of partnership
 17 authority that will operate with respect to a person not a
 18 partner as provided in [section 17(4) and (5)] in any
 19 transaction, whether or not the transaction is appropriate
 20 for winding up the partnership business.

21 **NEW SECTION. Section 50.** Partner's liability to other
 22 partners after dissolution. (1) Except as provided in
 23 [section 45(3)(b)] and subsection (2) of this section, after
 24 dissolution a partner is liable to the other partners for
 25 the partner's share of any partnership liability incurred

1 under [section 48].

2 (2) A partner who, with knowledge of the winding up,
3 incurs a partnership liability under [section 48(2)] by an
4 act that is not appropriate for winding up the partnership
5 business is liable to the partnership for any loss caused to
6 the partnership arising from the liability.

7 NEW SECTION. Section 51. Settlement of accounts among
8 partners. (1) In winding up a partnership's business, the
9 assets of the partnership must be applied to discharge its
10 obligations to creditors, including partners who are
11 creditors. Any surplus must be applied to pay in cash the
12 net amount distributable to partners in accordance with
13 their right to distributions pursuant to subsection (2).

14 (2) Each partner is entitled to a settlement of all
15 partnership accounts upon winding up the partnership
16 business. In settling accounts among the partners, the
17 profits and losses that result from the liquidation of the
18 partnership assets must be credited and charged to the
19 partners' accounts. The partnership shall make a
20 distribution to a partner in an amount equal to that
21 partner's positive balance. A partner shall contribute to
22 the partnership an amount equal to that partner's negative
23 balance.

24 (3) To the extent not taken into account in settling
25 the accounts among partners pursuant to subsection (2), each

1 partner shall contribute, in the proportion in which the
2 partner shares partnership losses, the amount necessary to
3 satisfy partnership obligations. If a partner fails to
4 contribute, the other partners shall contribute, in the
5 proportions in which the partners share partnership losses,
6 the additional amount necessary to satisfy the partnership
7 obligations. A partner or a partner's legal representative
8 may recover from the other partners any contributions the
9 partner makes to the extent the amount contributed exceeds
10 that partner's share of the partnership obligations.

11 (4) The estate of a deceased partner is liable for the
12 partner's obligation to contribute to the partnership.

13 (5) An assignee for the benefit of creditors of a
14 partnership or a partner, or a person appointed by a court
15 to represent creditors of a partnership or a partner, may
16 enforce a partner's obligation to contribute to the
17 partnership.

18 NEW SECTION. Section 52. Conversion of partnership to
19 limited partnership. (1) A partnership may be converted to a
20 limited partnership pursuant to this section.

21 (2) The terms and conditions of a conversion of a
22 partnership to a limited partnership must be approved by all
23 the partners or by a number or percentage specified for
24 conversion in the partnership agreement.

25 (3) After the conversion is approved by the partners,

1 the partnership shall file a certificate of limited
2 partnership that satisfies the requirements of 35-12-601 and
3 includes:

4 (a) a statement that the partnership was converted to a
5 limited partnership from a partnership;

6 (b) its former name; and

7 (c) a statement of the number of votes cast by the
8 partners for and against the conversion and, if the vote is
9 less than unanimous, the number or percentage required to
10 approve the conversion under the partnership agreement.

11 (4) The conversion takes effect when the certificate of
12 limited partnership is filed or at any later date specified
13 in the certificate.

14 (5) A partner who becomes a limited partner as a result
15 of the conversion remains liable as a partner for an
16 obligation incurred by the partnership before the conversion
17 takes effect. If the other party to a transaction with the
18 limited partnership reasonably believes when entering the
19 transaction that the limited partner is a general partner,
20 the partner is liable for an obligation incurred by the
21 limited partnership within 90 days after the conversion
22 takes effect. The partner's liability for all other
23 obligations of the limited partnership incurred after the
24 conversion takes effect is that of a limited partner as
25 provided in Title 35, chapter 12.

1 NEW SECTION. Section 53. Conversion of limited
2 partnership to partnership. (1) A limited partnership may be
3 converted to a partnership pursuant to this section.

4 (2) Notwithstanding a provision to the contrary in a
5 limited partnership agreement, the terms and conditions of a
6 conversion of a limited partnership to a partnership must be
7 approved by all the partners.

8 (3) After the conversion is approved by the partners,
9 the limited partnership shall cancel its certificate of
10 limited partnership pursuant to 35-12-603.

11 (4) The conversion takes effect when the certificate of
12 limited partnership is canceled.

13 (5) A limited partner who becomes a partner as a result
14 of the conversion remains liable only as a limited partner
15 for an obligation incurred by the limited partnership before
16 the conversion takes effect. The limited partner is liable
17 as a partner for an obligation of the partnership incurred
18 after the conversion takes effect.

19 NEW SECTION. Section 54. Effect of conversion --
20 entity unchanged. (1) A partnership or limited partnership
21 that has been converted pursuant to [section 52 or 53] is
22 for all purposes the same entity that existed before the
23 conversion.

24 (2) When a conversion takes effect:

25 (a) all property owned by the converting partnership or

1 limited partnership remains vested in the converted entity;

2 (b) all obligations of the converting partnership or
3 limited partnership continue as obligations of the converted
4 entity; and

5 (c) an action or proceeding pending against the
6 converting partnership or limited partnership may be
7 continued as if the conversion had not occurred.

8 NEW SECTION. **Section 55. Merger of partnerships.** (1)

9 Pursuant to a plan of merger approved as provided in
10 subsection (3), a partnership may be merged with one or more
11 partnerships or limited partnerships.

12 (2) The plan of merger must set forth:

13 (a) the name of each partnership or limited partnership
14 that is a party to the merger;

15 (b) the name of the surviving entity into which the
16 other partnerships or limited partnerships will merge;

17 (c) whether the surviving entity is a partnership or a
18 limited partnership and the status of each partner;

19 (d) the terms and conditions of the merger;

20 (e) the manner and basis of converting the interests of
21 each party to the merger into interests or obligations of
22 the surviving entity or into money or other property in
23 whole or part; and

24 (f) the street address of the surviving entity's chief
25 executive office.

1 (3) The plan of merger must be approved:

2 (a) in the case of a partnership that is a party to the
3 merger, by all the partners or a number or percentage
4 specified for merger in the partnership agreement; and

5 (b) in the case of a limited partnership that is a
6 party to the merger, by the vote required for approval of a
7 merger by the law of the state or foreign jurisdiction in
8 which the limited partnership is organized and, in the
9 absence of such specifically applicable law, by all the
10 partners, notwithstanding a provision to the contrary in the
11 partnership agreement.

12 (4) After a plan of merger is approved and before the
13 merger takes effect, the plan may be amended or abandoned as
14 provided in the plan.

15 (5) The merger takes effect on the latest of:

16 (a) the approval of the plan of merger by all parties
17 to the merger, as provided in subsection (3);

18 (b) the filing of all documents required by law to be
19 filed as a condition to the effectiveness of the merger; or

20 (c) any effective date specified in the plan of merger.

21 NEW SECTION. **Section 56. Effect of merger.** (1) When a
22 merger takes effect:

23 (a) every partnership or limited partnership that is a
24 party to the merger other than the surviving entity ceases
25 to exist;

1 (b) all property owned by each of the merged
2 partnerships or limited partnerships vests in the surviving
3 entity;

4 (c) all obligations of every partnership or limited
5 partnership that is a party to the merger become the
6 obligations of the surviving entity; and

7 (d) an action or proceeding pending against a
8 partnership or limited partnership that is a party to the
9 merger may be continued as if the merger had not occurred or
10 the surviving entity may be substituted as a party to the
11 action or proceeding.

12 (2) The secretary of state is the agent for service of
13 process in an action or proceeding against a surviving
14 foreign partnership or limited partnership to enforce an
15 obligation of a domestic partnership or limited partnership
16 that is a party to a merger. The surviving entity shall
17 promptly notify the secretary of state of the mailing
18 address of its chief executive office and of any change of
19 address. Upon receipt of process, the secretary of state
20 shall mail a copy of the process to the surviving foreign
21 partnership or limited partnership.

22 (3) A partner of the surviving partnership or limited
23 partnership is liable for:

24 (a) all obligations of a party to the merger for which
25 the partner was personally liable before the merger;

1 (b) all other obligations of the surviving entity
2 incurred before the merger by a party to the merger, but
3 those obligations may be satisfied only out of property of
4 that entity; and

5 (c) all obligations of the surviving entity incurred
6 after the merger takes effect.

7 (4) If the obligations incurred before the merger by a
8 party to the merger are not satisfied out of the property of
9 the surviving partnership or limited partnership, the
10 partners of that party immediately before the effective date
11 of the merger shall contribute the amount necessary to
12 satisfy that party's obligations to the surviving entity in
13 the manner provided in [section 51(3)] as if the merged
14 party were dissolved.

15 (5) A partner of a party to a merger who does not
16 become a partner of the surviving partnership or limited
17 partnership is dissociated from the entity, of which that
18 partner was a partner, as of the date the merger takes
19 effect. The surviving entity shall cause the partner's
20 interest in the entity to be purchased under [section 39].
21 The surviving entity is bound under [section 40] by an act
22 of a partner dissociated under this subsection, and the
23 partner is liable under [section 41] for transactions
24 entered into by the surviving entity after the merger takes
25 effect.

NEW SECTION. Section 57. Statement of merger. (1)

After a merger, the surviving partnership or limited partnership may file a statement that one or more partnerships or limited partnerships have merged into the surviving entity.

(2) A statement of merger must contain:

(a) the name of each partnership or limited partnership that is a party to the merger;

(b) the name of the surviving entity into which the other partnerships or limited partnerships were merged;

(c) the street address of the surviving entity's chief executive office and of an office in this state, if any; and

(d) whether the surviving entity is a partnership or limited partnership.

(3) Except as provided in subsection (4), for the purposes of 35-10-302, property of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon filing a statement of merger.

(4) For the purposes of 35-10-302, real property of the surviving partnership or limited partnership that before the merger was held in the name of another party to the merger is property held in the name of the surviving entity upon recording a certified copy of the statement of merger in the

office for recording transfers of that real property.

(5) A filed and, if appropriate, recorded statement of merger that is executed and declared to be accurate pursuant to [section 6], that states the name of a partnership or limited partnership that is a party to the merger in whose name property was held before the merger, and that states the name of the surviving entity but that does not contain all of the other information required by subsection (2) operates with respect to the partnerships or limited partnerships named to the extent provided in subsections (3) and (4).

NEW SECTION. Section 58. Nonexclusive. [Sections 52 through 57] are not exclusive. Partnerships or limited partnerships may be converted or merged in any other manner provided by law.

Section 59. Section 31-2-106, MCA, is amended to read:

"31-2-106. **Exempt property -- bankruptcy proceeding.** No An individual may not exempt from the property of the estate in any bankruptcy proceeding the property specified in 11 U.S.C. 522(d). An individual may exempt from the property of the estate in any bankruptcy proceeding:

(1) that property exempt from execution of judgment as provided in 19-3-105, 19-4-706, 19-5-704, 19-6-705, 19-7-705, 19-8-805, 19-9-1006, 19-10-504, 19-11-612, 19-13-1004, 19-21-212, Title 25, chapter 13, part 6,

1 33-7-522, 33-15-512 through 33-15-514, 35-10-502,
2 39-51-3105, 39-71-743, 39-73-110, 53-2-607, 53-9-129, Title
3 70, chapter 32, and 80-2-245;

4 (2) the individual's right to receive unemployment
5 compensation and unemployment benefits; and

6 (3) the individual's right to receive benefits from or
7 interest in a private or governmental retirement, pension,
8 stock bonus, profit-sharing, annuity, or similar plan or
9 contract on account of illness, disability, death, age, or
10 length of service, excluding that portion of contributions
11 made by the individual within 1 year before the filing of
12 the petition in bankruptcy which exceeds 15% of the
13 individual's gross income for that 1-year period, unless:

14 (a) the plan or contract was established by or under
15 the auspices of an insider that employed the individual at
16 the time the individual's rights under the plan or contract
17 arose;

18 (b) the benefit is paid on account of age or length of
19 service; and

20 (c) the plan or contract does not qualify under section
21 401(a), 403(a), 403(b), 408, or 409 of the Internal Revenue
22 Code of 1954 (26 U.S.C. 401(a), 403(b), 408, or 409)."

23 NEW SECTION. Section 60. Repealer. Sections 35-10-303,
24 35-10-304, 35-10-306, 35-10-404, 35-10-501, 35-10-502,
25 35-10-503, 35-10-504, 35-10-507, 35-10-601, 35-10-603,

1 35-10-604, 35-10-605, 35-10-606, 35-10-607, 35-10-608,
2 35-10-610, 35-10-611, 35-10-612, 35-10-613, 35-10-614, and
3 35-10-615, MCA, are repealed.

4 NEW SECTION. Section 61. Codification instruction.
5 [Sections 4, 6 through 10, 14, 17, 18, 21, 25, 29, 30, 32
6 through 34, 36 through 45, and 48 through 58] are intended
7 to be codified as an integral part of Title 35, chapter 10,
8 and the provisions of Title 35, chapter 10, apply to
9 [sections 4, 6 through 10, 14, 17, 18, 21, 25, 29, 30, 32
10 through 34, 36 through 45, and 48 through 58].

11 NEW SECTION. Section 62. Severability. If a part of
12 [this act] is invalid, all valid parts that are severable
13 from the invalid part remain in effect. If a part of [this
14 act] is invalid in one or more of its applications, the part
15 remains in effect in all valid applications that are
16 severable from the invalid applications.

17 NEW SECTION. Section 63. Application to existing
18 relationships. (1) Except as otherwise provided in this
19 section, [this act] applies to all partnerships in existence
20 on October 1, 1993, that were formed under Title 35, chapter
21 10, or any other predecessor law providing for the
22 formation, operation, and liquidation of partnerships.

23 (2) [This act] does not impair the obligations of a
24 contract existing on October 1, 1993, or affect an action or
25 proceeding begun or right accrued before October 1, 1993.

1 (3) A judgment against a partnership or a partner in an
2 action commenced before October 1, 1993, may be enforced in
3 the same manner as a judgment rendered before October 1,
4 1993.

-End-

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising the law concerning partnerships.

ASSUMPTIONS:

1. Filings with the Secretary of State for assumed business names will increase by 25% beginning in FY94.
2. Requests for information and certified copies of partnership information from the Secretary of State will increase by 15% beginning in FY94. The associated workload increase in searching for information, copy reproduction, and preparation and certified mailing of files is estimated to equate to a full year 0.50 Grade 7 FTE. The increase in certificate, postage, and copies expenses is estimated to be \$1,650 per year.
3. Minimal computer system changes are necessary to implement the legislation.

FISCAL IMPACT:

Expenditures:

Secretary of State, Business and Government Services Program:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	21.25	21.75	.50	21.25	21.75	.50
Personal Services	552,725	561,677	8,952	554,103	563,055	8,952
Operating Expenses	366,117	367,767	1,650	419,394	421,044	1,650
Equipment	13,770	13,770	0	7,057	7,057	0
Total	932,612	943,214	10,602	980,554	991,156	10,602
<u>Funding:</u>						
General Fund	932,612	943,214	10,602	980,554	991,156	10,602
<u>Revenues:</u>						
General Fund (Assumed Business Names)	34,620	43,275	8,655	34,620	43,275	8,655
General Fund (Requests for Info)	30,000	34,500	4,500	30,000	34,500	4,500
Total	64,620	77,775	13,155	64,620	77,775	13,155
Net Impact on General Fund			2,553			2,553

David Lewis 1-20-93
 DAVID LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Mike Halligan 1/21/93
 MIKE HALLIGAN, PRIMARY SPONSOR DATE
 Fiscal Note for SB0046, as introduced
 SB46

MINUTES

MONTANA SENATE
53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By Sen. Bill Yellowtail, on January 12, 1993, at
10:05 a.m.

ROLL CALL

Members Present:

Sen. Bill Yellowtail, Chair (D)
Sen. Steve Doherty, Vice Chair (D)
Sen. Sue Bartlett (D)
Sen. Chet Blaylock (D)
Sen. Bob Brown (R)
Sen. Bruce Crippen (R)
Sen. Eve Franklin (D)
Sen. Lorents Grosfield (R)
Sen. Mike Halligan (D)
Sen. David Rye (R)
Sen. Tom Towe (D)

Members Excused: Sen. Harp

Members Absent: NONE

Staff Present: Valencia Lane, Legislative Council
Rebecca Court, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 46
SB 68
SB 64

Executive Action: NONE

HEARING ON SB 46

Opening Statement by Sponsor:

Senator Halligan, District 29, told the Committee SB 46 repeals the uniform partnership act. The uniform partnership act governs the creation of partnerships, establishes what the nature of the business organization is and provides some rules with respect to the rights and obligations of the partners.

Proponents' Testimony:

Steven C. Bahls, Professor and Associate Dean at the University of Montana School of Law, read from prepared testimony. Exhibit #1. Professor Bahls provided the Uniform Partnership Act of 1992. Exhibit #2 and #3.

Garth Jacobson, representing the Secretary of States office, testified in support of SB 46. Mr. Jacobson stated SB 46 will place creditors and the public on notice to what is going on in the partnership, who has authority, and who has withdrawn from the partnership. SB 46 would require additional staff in the Secretary of the States office, which would be revenue neutral by degenerating the additional revenue by virtue of the filings that are made. The Secretary of the States office has rule making authority to set the filing commencements with the cost of the filings. This may require an additional filing office depending on the number of filings. SB 46 is beneficial for the Montana business community. The Secretary of States office is in complete support of SB 46. Mr. Jacobson recommends SB 46 DO PASS.

Dan Ritter, on behalf of Montana Chamber of Commerce, voiced support that SB 46 DO PASS, based on the testimony of Professor Bahls.

Opponents' Testimony:

NONE

Questions From Committee Members and Responses:

Senator Towe questioned Professor Bahls regarding page 16, section 14. Professor Bahls replied that this has been a subject of litigation in Montana as to when property is partnership property. The current law states property is presumed to be partnership property if bought with partnership assets. This is not a complete resolutions of all questions that may come up. SB 46 defines the limits. SB 46 is more defining than existing law. It continues the general rule that if bought with partnership assets in the name of the partnership, it is presumed to be partnership property.

Senator Towe questioned Professor Bahl if getting into Bankruptcy Court would build more lawsuits with this kind of language. Professor Bahl responded SB 46 provides more benefit to the Bankruptcy Court as they would look to the state law to determine ownership of the property and who owns the assets. SB 46 provides more detail than the existing statute.

Senator Towe inquired about the filings and the acceptance of the banks. Professor Bahl told the Committee the note is an optional filing and partnerships need not file anything. When a bank deals with a partnership often all the partners execute the instrument so they can make sure someone of authority has signed. It would be much easier for banks to require the partnership to

file with the Secretary of the State to create a presumption as to who has authority and then verify with the Secretary of State. Banks will require partnerships to file with the Secretary of State so they know who has authority and continue to have all the partners sign so they would receive the personal guarantees of all partners.

Senator Crippen questioned Professor Bahls about the sale and purchasing of partnership property. The existing statute provides partnership property held as tenancy in partnership. Tenancy in partnership is subject to the dissolution rules of the partnership statute. If a partner sells, it is a sale of capital assets. The ownership interest of SB 46 continues with the common law that interest is personal property. The ownership interest would be a capital asset. The sale of partnership interest, is a sale of a capital asset.

Senator Towe asked for an explanation of page 8 and page 22. Professor Bahl replied the reference to the certified copy of the filed statement, refers to the filed statement with the Secretary of State. Partners need to file with the Secretary of the State first, then the county, with respect in filing business documents and documents relating to personnel property. With respect to real property, it is still appropriate to file with the county. The bank would be advised to verify a certified copy most recently filed with the Secretary of State. Under SB 46 we would have commercial certainty of who has authority by requiring a filing.

Senator Grosfield questioned the cost of the filing fee and the waiting period. Senator Bahls told the Committee the public is not assumed to have notice of the filing until 90 days after the filing. Senator Jacobsen stated the range of fees would be \$15 to \$20. The fees would increase over time.

Closing by Sponsor:

Senator Halligan closed on SB 46.

HEARING ON SB 68

Opening Statement by Sponsor:

Senator Blaylock, District 43, stated from 1889 till 1972 Montana could not be sued unless given permission. In 1972 it was adopted in the Constitution the right to sue if there was negligence on part of an employee of the State of Montana that had caused serious accidents. Because of the enormous exposure of roads in Montana the suits came in and the settlements were large. Montana could not afford to continue this kind of thing. Rather than do away with what was in the Constitution, the Legislators added a sunset and put limits on what the state was liable for; \$700,000 per person; and \$1,500,000 if more than one person is involved. SB 68 repeals the sunset and would make these limits and this law permanent. SB 68 does not prevent

ROLL CALL

SENATE COMMITTEE

Judiciary

DATE 1-12-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty	X		
Senator Brown	X		
Senator Crippen	X		
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp			X
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X-		
Valencia Lane	X		

FC8

Attach to each day's minutes

TESTIMONY OF
STEVEN C. BAHLsin support of
Senate Bill 46

(Montana Uniform Partnership Act)

My name is Steven Bahl's. I have the pleasure of serving as a Professor and the Associate Dean at the University of Montana School of Law. For the past eight years, I have taught the Agency and Partnership course at the School of Law. I also teach agricultural law. Prior to teaching, I practiced law for six years, primarily representing small businesses. I am the chair of the State Bar's Business Law Committee of the Tax, Probate and Business Section.

I am here today to support SB 46 (the Montana Uniform Partnership Act). The proposed bill was drafted and approved in 1992 by the National Conference of Commissioners on Uniform State Laws. I am here today at the request of the Montana Commissioners. The National Conference of Commissioners on Uniform State Laws has drafted numerous pieces of legislation already adopted in Montana, including the Uniform Probate Act and the Uniform Commercial Code. Its high quality, uniform legislation sets the standard for legislation in the United States. Please permit me to include in the record, the official comments to the Uniform Partnership Act as prepared by the National Conference of Commissioners on Uniform State Laws.

Montana partnerships are currently governed by Chapter 10 of Title 35. The current law was drafted 78 years ago by the Uniform Law Commissioners. It was adopted in Montana in 1947 and has remained relatively unchanged since then. The current law governs the definition of a partnership, the duties of partners to each other, the ability of partners to enter into contracts, the partners obligations to creditors and dissolution of a partnership. In short, the existing law governs the internal affairs of a partnership.

The new Uniform Partnership Act, as embodied in SB 46, does not greatly expand the scope or coverage of the existing law; instead it updates the law to reflect modern commercial realities. It also clarifies numerous ambiguities in the law. The distilled experience of 78 years since the promulgation of the original Uniform Partnership Law provides the basis for these changes.

Senate Bill 46, though drafted by the Uniform Law Commissioners, has been modified in one primary respect. Working with the attorney for the Office of the Secretary of State, I have drafted provisions for the optional filings that are consistent with the filing provisions of the Secretary of State for other business organizations. With this exception (and the exception of stylistic changes proposed by the Legislative Council) the Act remains a Uniform Act.

law. Partnerships and those dealing with partnerships should not be subjected to the uncertainty and ambiguity found in our existing out of date law. Partnerships exist when two or more persons carry on a business for profit as co-owners. People doing business together may be partners even if they do not have a written partnership agreement. It is one of the few types of business organization that the law permits to be formed without a required filing with the secretary of state. Partnerships are often formed without the aid of an attorney. Because many partnerships do not have the benefit of expert legal advice or a written partnership agreement, it is important that the law clearly and unambiguously provide for sensible governance of partnership affairs.

Though most of the proposed changes in the law could be described as in the nature of housekeeping (that is, clarification of ambiguities), several of the changes are more significant. I would like to describe these changes.

1. Nature of a Partnership. The current law does not clearly state whether a partnership is considered an aggregation of individuals or an entity. The provisions of the current law lead to inconsistent conclusions. The issue of whether a partnership is an entity or an aggregation of individuals is important in resolving several questions:

- Can an individual partner bind the partnership even if his or her acts are not authorized by the partnership?
- How is property to be held (e.g. by the partnership or in the joint names of the partners)?
- Does a partnership continue when a partner dies?

The new law clearly provides that a partnership is an entity. Section 11. As a result, under the new law:

- Property can be held by the partnership. The cumbersome provision of the old law, that property is owned as tenants in partnership, no longer applies. It is the entity which conveys the property. Section 13 and 16(a)
- The partnership, as an entity, can effectively prohibit partners from binding the partnership to a contract, unless the contract is authorized. Section 17
- A partnership is no longer dissolved when an individual partner dies or resigns from the partnership. The old rule that a partnership is dissolved upon the death or resignation of a partner was cumbersome and created

substantial problems for partnerships (especially partnership not employing an attorney) wishing to continue after the death or dissolution of a partnership. Section 18

2. Statement of Authority. The new law continues the previous general rule that partners are agents of each other. Section 15. At times, in practice, this rule can lead to unintended results. Sometimes partners are able to bind a partnership to a contract, even though the contract was not authorized by the other partners. Section 15. The new law would provide a vehicle to protect the partnership from a partner, who without authority, sells partnership assets or binds the partnership to a contract. The new law permits the filing of a statement of partnership authority with the Secretary of State. This statement can be used to limit the power of certain partners. Section 17.

The problem of partners entering into contracts without clear authority to do so is a significant problem. See *Walsh v. Ellingson Agency*, 188 Mont. 367, 613 P. 2d 1381 (1980) (dispute over whether one partner could convey property on the objection of another partner) and *Ditzel v. Kent*, 131 Mont. 129, 308 P. 2d 628 (1957) (dispute over whether partners agreement to pay a commission bound the partnership). Consider as an example the family farm partnership. Suppose the partners intend that only the first generation (not the second) partners have the authority to sign contracts that bind the partnership. Under the current law, contracts signed by the second generation might nonetheless be enforceable if the second generation partners appear to be acting with apparent authority. MCA § 35-10-301. Under the new law, a filing could be made with the secretary of state, disclaiming the authority of the younger partners to enter into transactions on behalf of the partnership. Section 17(1) and (2). If the younger generation attempts to transfer property in violation of the limits of their authority on record with the secretary of state, the transaction is ineffective.

The new law permits partners to effectively agree who has authority and, by filing a public notice with the secretary of state, to put creditors or others on notice who has authority. The result is increased certainty in commercial contracts.

In addition, existing law provides that a partner retiring from a partnership (or a deceased partners estate) can be liable for the debts of the partnership even if those debts arise after the date of the partners death or retirement. See MCA § 35-10-607(b). The new law permits partners to eliminate their liability for debts incurred after their death or retirement by filing a notice of their disassociation with the partnership with the secretary of state. Section 42. The family farm partnership might again serve as a good example. Suppose Dad retires and moves

off the farm, leaving the farm to his children with whom he operated the farm in partnership. Unless Dad notified each farm creditor of his retirement and published notice in the local newspaper of his retirement, under existing law, Dad could be liable for new debts incurred by his children after his retirement. Under the new law, Dad can protect himself from liability for most new debts by filing a simple notice with the secretary of state.

3. Fiduciary Responsibility. The current law is largely silent as to the partners duties toward each other. As a result, it is up to the courts to establish the extent of the duty owed from one partner to another. Courts in various jurisdictions have taken inconsistent approaches. Some courts are quick to second guess the actions of partners because they are "trustees." See, e.g. *Meinhard v. Salmon*, 249 N.Y. 458, 164 N.E. 545 (1928), (the classic statement of partners' duties, adopted in Montana in *Murphy v. Redland*, 178 Mont. 296, 583 P.2d 1049 (1978)). Other courts are less eager to second guess the actions of partners, indicating that so long as the partner was acting in good faith the partner will be protected. *Johnson v. Weber*, 166 Ariz. 528, 803 P. 2d 439 (1990); *Duffy v. Piazza Construction, Inc.*, 62 Wash App. 19 815 P. 2d 267 (1991). Montana law is not clear about this issue. As such, to increase certainty, the new law provides

- Partners must act in good faith toward each other (Section 28(4));
- Individual partners may not make a profit at the expense of the partnership (Section 28(2)); and
- Courts may not second guess management decisions, unless the partner making the decision acted with gross negligence or acted recklessly (Section 28(3)).

The impact of the rule may again be illustrated by again turning to the family farm partnership. Suppose Dad, as a partner, substantially expands the farm by buying additional acreage with borrowed money. Further, suppose Dad's motivation is to expand the farm so that the farm might also support his daughter, who just graduated from the ag school in Bozeman. Let's assume that shortly after buying the land interest rates increase and land prices plummet. Suppose the farm is foreclosed and the children sue Dad for his alleged misjudgment in expanding the farm partnership for the benefit of his daughter. The new law would protect Dad from a court, with the benefit of 20/20 hindsight vision, second guessing his judgement unless Dad was grossly negligent or acted recklessly. By protecting Dad and other partners from second guessing, Dad and the other partners are freer to take calculated risks and make the judgements that entrepreneurs must make.

4. Dissolution. Under the existing law, a partnership dissolves when a partner dies or when a partner retires or quits the partnership. MCA § 35-10-603. When a partnership dissolves, any partner who has not wrongfully dissolved the partnership, may wind-up the partnership. MCA § 35-10-607(1), 609 and 610(1). Winding up usually consists of selling the assets of the partnership and applying the cash proceeds to pay the liabilities and the amounts due the partner MCA § 35-10-610(1).

This existing statutory scheme is often inappropriate. Very often the remaining partners in a partnership desire to continue its business and simply buy out the interest of the retiring or deceased partner. To accomplish the goal of having the partnership continue, under existing law, often requires complex legal documentation.

Under the proposed law, partnerships do not automatically dissolve when a partner dies, retires or otherwise disassociates. Section 38. Instead, the partnership may continue, if the partner's interest is purchased. The new law properly recognizes that a withdrawing partner, whose interest the partnership is willing to purchase, should not be allowed to force dissolution.

Allow me to once again return to the family farm partnership. For purposes of this illustration, assume the family farm partnership has no written agreement and the partners have not agreed on a specific date of dissolution. Suppose Junior, a partner in the family farm partnership, decides to go to law school. After taking a course in partnership law and learning of his rights, he decides to quit the partnership. Under existing law, by quitting the partnership, Junior has forced dissolution. MCA § 35-10-603. Assume that the remaining members of the family wish to continue. Under existing law, Junior (contrary to the other partners' wishes) may wind-up the partnership. MCA §§ 35-10-607(1)(a) and 35-10-609. In doing so, Junior may force the liquidation of the assets of the farm to pay the liabilities and amounts due to the partners. MCA § 35-10-610(1). The winding up process, under existing law, could result in the loss of the family farm. The new law eliminates this risk by permitting the partnership to buy Junior's interest without dissolving the partnership. Section 38.

The existing law is appropriate for partnerships operating in the first half of this century. It is no longer appropriate for partnerships operating in 1993. At the turn of the century most partnerships were relatively small partnerships with relatively few partners. Partners, perhaps, were more trusting of each other and less eager to ask a court to second guess decisions made by their co-partners. In today's increasingly complex world, it is not uncommon to have 20 or more partners in a partnership. Courts are asked with increasing

1-12-93
SB 46

frequency to resolve partnership disputes. Partners, and courts, need a clear law that recognizes today's commercial realities.

I recognize that this is a lengthy bill with many technical changes. Please remember, however, that the act is a Uniform Act, drafted by the many leading authorities in the nation. These experts, as have I, studied this bill line for line. Continued uniformity in the law is highly desirable. Failure to adopt this bill will mean that Montana will eventually be out of step as neighboring states adopt this Uniform Act. Montana businesses deserve the best, most modern, partnership law available. Adoption of SB 46 will cost the state nothing (any costs associated with additional filings are to be passed on as filing fees- Section 6(6)), but will provide added certainty for businesses operating as partnerships. This legislation, if adopted, will provide a quality partnership law serving partners well into the twenty-first century.

UNIFORM PARTNERSHIP ACT (1992)

UNIFORM PARTNERSHIP ACT

ART. NO. 2

DATE 1-12-93

Introduction FILE NO. SB 46

Partnership law in the United States has been derived from one source, the Uniform Partnership Act, since it was originally promulgated by the Uniform Law Commissioners in 1914. The Uniform Act is the law of partnership in the United States.

But 78 years is a long time in the reckonings of the law, and in 1992 the Uniform Law Commissioners have promulgated the first revision of the Uniform Partnership Act. The new Act reflects both continuity and change. On the one hand, it refurbishes a venerable form. Partnership as a form of business organization precedes corporations, limited partnerships, business trusts, and just about everything else except the most basic business organization of all, the sole proprietorship. And in UPA (1992), a partnership retains its basic, historic character.

But at the same time, the partnership form has to be adapted to the changes in the way business is done and the way it is expected to be done far into the next century. The change reflected in UPA (1992) is of an evolutionary sort. The distilled experience of the past 78 years is the basis for the new text.

A partnership is a form of business organization. It exists whenever more than one person associates for the purpose of

doing business for profit. The notion is that the partners join their capital and share accordingly in profits and losses. They, also, share control over the enterprise and subsequent liabilities. Historically, every partner is equally able to transact business on behalf of the partnership. Creditors of the partnership are entitled to rely upon the assets of the partnership and those of every partner in the satisfaction of the partnership's debts. The character of any partnership depends upon the agreement of the partners.

A partnership may be as simple as two people meeting on a street corner and deciding to conduct some business together, arising from no more than verbal agreement and a handshake. A partnership may, also, be as complex as a large law firm, with tiers of partners and varying rights and obligations, memorialized in extensive written agreements. Partnership law must accommodate them all.

The Uniform Partnership Act governs the creation of a partnership, establishes what the nature of this business organization is, and provides some rules respecting the rights and obligations of partners among themselves, and those between partners and other parties that do business with the partnership and the partners. It provides the rules that govern the dissolution of a partnership when the appropriate time comes to dissolve it. The original Act did this, and the UPA (1992) is

designed to do the essential task much better. UPA (1992) adds, as well, concepts not ever contemplated in the 1914 Act - the concepts of merger and conversion.

This summary is an effort to highlight the essential differences between the 1914 Act and UPA (1992). It cannot be a comprehensive review, but is designed to point out to the reader the progress of 1992 over 1914.

Nature of a Partnership

The first essential change in UPA (1992) over the 1914 Act that must be discussed as a prelude to the rest of the revision, concerns the nature of a partnership. There is age-long conflict in partnership law, over the nature of the organization. Should a partnership be considered merely an aggregation of individuals or should it be regarded as an entity by itself? The answer to these questions considerably affects such matters as a partner's capacity to do business for the partnership, how property is to be held and treated in the partnership, and what constitutes dissolution of the partnership. The 1914 Act made no effort to settle the controversy by express language, and has rightly been characterized as a hybrid, encompassing aspects of both theories.

It is not necessary to go into the dispute with much detail here, because UPA (1992) makes a very clear choice that settles the controversy. To quote Section 201, "A partnership is an entity." All outcomes in UPA (1992) must be evaluat-

ed in light of that clearly articulated language.

What are some of the outcomes of this decision to treat a partnership as an entity in UPA (1992) that are not part of the hybrid 1914 Act? The 1914 Act expressly permits a partnership to hold property as a partnership. The difference is the interest that each partner holds. In the 1914 Act, a partner was treated "as a co-owner with his partners of specific partnership property holding as a tenant in partnership." In UPA (1992), a partner has his or her partnership interest, but is not a co-owner of specific partnership property. The entity holds the specific property. The partners have their interest in the entity.

The 1914 Act approach, which reflects the retention of aggregate theory in that hybrid Act, constitutes a serious impediment to transferring property to and from the partnership. The 1914 Act, because of adopting aggregate theory in so far as ownership of property goes, has to provide rules that carefully limit and restrict the transfer powers of partners, so that individual partners cannot convey their ownership rights in ways to injure and inevitably defeat the partnership. Even so, subsequent cases have revealed the co-ownership aspect of partnership to be a serious weakness in partnership structure. That serious weakness is not continued into UPA (1992).

Dissolution of the partnership is another area in which selection of entity versus aggregate theory. Dissolution will be discussed a little later, but dissolution

upon the filing of any statement. But the statement, if filed, has an impact upon third party dealing with the partnership.

The main effect is to assure any third party that the business of the partnership can be conducted and the partnership will be bound, if the third party deals with a partner with authority provided in a statement. Any limitation upon a partner's authority, however, does not affect any third party who does not know about the statement, except as to real estate transactions. If there is a limitation in a filed statement, that is also filed in the real property records of the locale, then, a third party dealing with that partner in a real estate transaction is held to know of the limitation.

Other Statements Available

UPA (1992) provides for other statements that may be filed, as well, pertaining to the partnership. A partner may file a statement of denial respecting facts, including limitation upon partnership authority, found in a statement of partnership authority. A partner or the partnership may file a statement of dissociation for the partner. And there is a statement of dissolution that may be filed when a partnership is dissolving. Each of these statements has a notice function. Third parties are held to have knowledge of these last two statements 90 days after they are filed.

If there is a merger, a statement also may be filed. A merger statement establishes the property relationships of the new

entity with respect to property of the merged entities.

Although these statements are not essential to either the creation or dissolution of a partnership, they have impact upon third parties transacting business with a partnership. They give necessary flexibility to the partnership in the conduct of business, and are important advances over the 1914 Act for that reason. They are also artifacts of the overall shift to entity theory in partnership law, the essential underlying shift in UPA (1992) over the 1914 Act.

Fiduciary Responsibilities

When a partnership is viewed as an aggregate of interests and an organization in which every partner is absolutely able to conduct the business of the partnership with third parties, and is able to conclude the partnership by any act of withdrawal, express treatment of partners' responsibilities to each other in the conduct of business may not be so important. All partners are assumed to be participating in the conduct of the business with knowledge of what other partners are doing on a daily basis.

The 1914 Act has very little to say about a partner's responsibilities to the other partners. A partner is a fiduciary who "must account to the partnership for any benefit, and hold as a trustee for it any profit derived by him without the consent of the other partners..." There is a full duty of disclosure between partners, but the, 1914 Act is, otherwise silent on the

occurs whenever a partner disaggregates under the 1914 Act, but not necessarily every time he or she dissociates from the entity under UPA(1992). Partnerships based upon aggregate theory are simply more fragile than partnerships based upon entity theory.

Creation of a Partnership

Creation of a partnership requires association of two or more persons to do business for profit. The concept is not materially different between the 1914 Act and UPA (1992). What UPA (1992) does is to put expressly what has been regarded as implied in the 1914 Act. By and large the rules of the 1914 Act have been regarded as default rules, rules that apply in the event that there is no express provision in the partnership agreement. The reliance upon implication leaves certain gray areas that have caused problems. How far can a partnership agreement go in abrogating the fiduciary responsibilities of a partner to other partners, for example?

UPA (1992) clearly expresses the primacy of the partnership agreement. The agreement applies, and the rules of UPA (1992) are regarded as default rules, with the exception of certain rules that protect partners. For example, a partner's duties of loyalty and good faith cannot be abrogated by agreement. The agreement cannot take away a partner's right of access to the partnership books. In general, however, the partnership agreement expressly controls over the language of the statute in UPA (1992).

Statement of Authority

A partnership is created anytime individuals associate together to do business. Under UPA (1992) the partnership formed is an entity, not an aggregation of individuals. UPA (1992) makes it clear the partnership is controlled by the agreement of the partners. But the partnership must function to do business, and the 1914 Act treats partners as co-equal in the conduct of that business. Any partner is an agent of the partnership. Any partner has the capacity to transfer property on the partnership's behalf. Any person doing business with a partnership is entitled to rely upon these basic rules to bind the partnership. To a large extent, these rules continue to apply in UPA (1992).

But UPA (1992) adds a new partnership capacity to the rules of the 1914 Act. The adoption of entity theory, again, provides some different perspective. Entities such as corporations and limited partnerships are founded upon the filing of a certificate in the appropriate state office. UPA (1992) does not require filing a certificate to found a partnership, preserving the availability of the partnership form of organization to both large and the small entities. It, however, permits the filing of a statement of partnership authority. The statement can be used to limit the capacity of a partner to act as an agent of the partnership, and limit a partner's capacity to transfer property on behalf of the partnership. The statement is voluntary. No partnership need file such a statement, nor is the existence of the partnership dependent

fiduciary responsibilities of each partner to the other partners.

UPA (1992) is not so silent. It articulates duties of loyalty and care to which each partner is to be held. There are baseline standards of conduct, therefore, that a partner has to meet. No agreement can abrogate these baselines. In addition, there is an express good faith obligation to which each partner is subject.

The duty of loyalty includes the duty expressed in the 1914 Act, but adds to it. There is a duty not to do business on behalf of someone with an adverse interest to the partnership's. A partner must refrain from business in competition with the partnership.

The standard of care is gross negligence or reckless conduct. A partner would be liable for such conduct, but not for ordinary negligence. The good faith obligation simply requires honest and fair dealing.

A partner may be sued more broadly in UPA (1992) than is the case in the 1914 Act. The earlier Act limited legal action to an action for an accounting.

Dissolution

A partnership dissolves under the 1914 Act upon the happening of specific events, either the end of the prescribed term of the partnership, as agreed by the partners, or when a partner dissociates, rightfully or wrongfully, with the partnership. At dissolution, the business of the

partnership has to be wound up and fruits of the enterprise distributed to the partners - after the creditors are paid, of course.

Automatic dissolution of the partnership after dissociation of a partner does not take place under UPA (1992). Only a partner who dissociates with notice of "express will to withdraw" causes the dissolution of the partnership. Thus, if a partner dies or is simply bought out, there is not automatic dissolution. Of the changes that UPA (1992) makes over the 1914 Act, this may be the most significant. The ordinary dissociation of a partner does not mean the dissolution of the entity.

Dissociation entitles the partner to have his or her interest purchased by the partnership, and terminates his or her authority to act for the partnership and to participate with the partners in running the business. Otherwise the entity continues to do business without the dissociating partner. No other characteristic of a partnership under UPA (1992) better illustrates the adoption of entity theory.

Conversion and Merger

UPA (1992) has absolutely new provisions on "conversion" and "merger." A partnership may convert to a limited partnership or a limited partnership may convert to a partnership under these new statutory rules. A partnership may merge with another partnership or limited partnership, forming an entirely new entity, under the new rules of UPA (1992).

Since a partnership is really a matter of agreement of the partners, there is no absolute barrier to either conversion or merger for a partnership under the 1914 Act. It would require unanimous consent of the partners, and a winding down process for the prior partnership or partnerships. What the statutory provisions of UPA (1992) do is to provide a process, and to permit agreement to less than unanimous consent of all partners to accomplish either conversion or merger. Under UPA (1992), a partnership agreement can specify that either conversion or

merger can be accomplished with less than unanimous consent. The agreement controls.

Conclusion

These are some of the principal advances of UPA (1992) over the 1914 Act. Partnership, as a fundamental form of business organization, needs to be updated for the next century. UPA (1992) provides the needed update.

Founded in 1892, the National Conference of Commissioners on Uniform State Laws is a confederation of state commissioners on uniform laws. Its membership is comprised of 300 practicing lawyers, judges, and law professors who are appointed by each of the 50 states, the District of Columbia, Puerto Rico and the U.S. Virgin Islands to draft uniform and model state laws and work toward their enactment.

UNIFORM PARTNERSHIP ACT (199²)

Contents

ARTICLE 1. GENERAL PROVISIONS

Section	Page
101. Definitions.	1
102. Knowledge and Notice.	4
103. Effect of Partnership Agreement; Nonwaivable Provisions.	7
104. Supplemental Principles of Law.	9
105. Execution, Filing, and Recording of Statements.	10
106. Law Governing Internal Affairs	13
107. Partnership Subject to Amendment or Repeal of [Act].	15

ARTICLE 2. NATURE OF PARTNERSHIP

201. Partnership As Entity	16
202. Existence of Partnership.	16
203. Partnership Property.	21
204. When Property Is Partnership Property.	22

ARTICLE 3. RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

301. Partner Agent of Partnership	26
302. Transfer of Partnership Property	31
303. Statement of Partnership Authority.	35
304. Statement of Denial.	40
305. Partnership Liable for Partner's Actionable Conduct.	41
306. Partner's Liability.	42
307. Action Against Partnership and Partners.	43
308. Purported Partner.	49
309. Liability of Incoming Partner.	52

This exhibit is 182 pages long. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

SENATE JUDICIARY COMMITTEE
EXHIBIT NO. 3
DATE 1-12-93
BILL NO. SB46

Motion/Vote:

Senator Bartlett moved SB 150 DO PASS AS AMENDED. Motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 63

Motion/Vote:

Senator Rye moved HB 63 BE CONCURRED IN. Motion CARRIED UNANIMOUSLY.

EXECUTIVE ACTION ON SB 46

Discussion:

Senator Halligan explained the amendments (Exhibit #3)

Senator Towe asked Senator Halligan if it refers to the partnership interest of the partner or other assets unrelated to the partnership. Senator Halligan said it includes interest plus the other interest that might be available to the bank.

Senator Towe asked Senator Halligan about amendment #4. Senator Halligan said the amendment clarifies that the Bankruptcy Code, not the Uniformed Partnership Act, governs the issue of levying execution actions against a partner for the debts of a bankrupt partner.

Motion:

Senator Halligan moved TO AMEND SB 46.

Discussion:

Senator Towe asked Senator Halligan about Amendment #4. Senator Halligan read Amendment #4.

Senator Towe asked Senator Halligan about bankruptcy in a partnership. Senator Halligan told the Committee that the bankruptcy code governs bankruptcy, and not the uniform partnership act.

Senator Towe told the Committee that he was satisfied with SB 46.

Vote:

Motion to amend SB 46 CARRIED UNANIMOUSLY.

Motion/Vote:

Senator Halligan moved SB 46 DO PASS AS AMENDED. Motion CARRIED UNANIMOUSLY.

ROLL CALL

SENATE COMMITTEE Judiciary DATE 1-28-93

NAME	PRESENT	ABSENT	EXCUSED
Senator Yellowtail	X		
Senator Doherty			X
Senator Brown	X		
Senator Crippen			X
Senator Grosfield	X		
Senator Halligan	X		
Senator Harp	X		
Senator Towe	X		
Senator Bartlett	X		
Senator Franklin	X		
Senator Blaylock	X		
Senator Rye	X		

FC8

Attach to each day's minutes

Amendments to Senate Bill No. 46
First Reading Copy

Requested by Senator Halligan
For the Committee on Judiciary

Prepared by Valencia Lane
January 27, 1993

1. Page 16, line 24.
Following: first "the"
Strike: "usual way"
Insert: "ordinary course"

2. Page 17, line 8.
Following: "the"
Strike: "usual way"
Insert: "ordinary course"

3. Page 25, line 9.
Following: "(b)"
Insert: "(i)"

4. Page 25, line 14.
Following: "dismissed;"
Insert: "and

(ii) Title 11 of the United States Code permits a
judgment creditor of a partner to levy execution against the
assets of the partner to satisfy a judgment based on a claim
against the partnership;"

5. Page 57, line 21.
Following: "positive"
Insert: "account"

3
1-28-93
SB 46

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 29, 1993

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration Senate Bill No. 46 (first reading copy -- white), respectfully report that Senate Bill No. 46 be amended as follows and as so amended do pass.

Signed: Wm Yellowtail
Senator William "Bill" Yellowtail, Chair

That such amendments read:

1. Page 16, line 24.
Following: first "the"
Strike: "usual way"
Insert: "ordinary course of"

2. Page 17, line 8.
Following: "the"
Strike: "usual way"
Insert: "ordinary course of"

3. Page 25, line 9.
Following: "(b)"
Insert: "(i)"

4. Page 25, line 14.
Following: "dismissed;"
Insert: "and

(ii) Title 11 of the United States Code permits a judgment creditor of a partner to levy execution against the assets of the partner to satisfy a judgment based on a claim against the partnership;"

5. Page 57, line 21.
Following: "positive"
Insert: "account"

-END-

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 53rd LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN RUSSELL FAGG, on March 9, 1993, at
9:00 a.m.

ROLL CALL

Members Present:

Rep. Russ Fagg, Chairman (R)
Rep. Randy Vogel, Vice Chairman (R)
Rep. Dave Brown, Vice Chairman (D)
Rep. Ellen Bergman (R)
Rep. Jody Bird (D)
Rep. Vivian Brooke (D)
Rep. Bob Clark (R)
Rep. Duane Grimes (R)
Rep. Scott McCulloch (D)
Rep. Jim Rice (R)
Rep. Angela Russell (D)
Rep. Tim Sayles (R)
Rep. Liz Smith (R)
Rep. Bill Tash (R)
Rep. Howard Toole (D)
Rep. Tim Whalen (D)
Rep. Diana Wyatt (D)

Members Excused: Rep. Karyl Winslow (R)

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Beth Miksche, Committee Secretary

Please Note: These are summary minutes. Testimony and
discussion are paraphrased and condensed.

Committee Business Summary:

Hearing: SB 46, SB 68, SB 336, SB 397
Executive Action: SB 46, SB 397, SB 37

HEARING ON SB 46

Opening Statement by Sponsor:

SEN. MIKE HALLIGAN, Senate District 29, Missoula, said the 1947 Uniform Partnership Act (UPA) has been changed constantly since then by case law. This is extremely important legislation with

respect to economic development in Montana.

Proponents' Testimony:

The following proponents provided written testimony:

Steve Bahls, Law Professor, University of Montana EXHIBITS 1, 2, and 3

Garth Jacobson, Chief Counsel, Secretary of State EXHIBIT 4

Lance Hoskins, Attorney, Dorsey & Whitney, Billings EXHIBIT 5

David Owen, Montana Chamber of Commerce, commented that it is important for Montana laws to be modern and provide for small business owners.

Opponents' Testimony: None

Questions From Committee Members and Responses:

REP. RICE asked Professor Bahls to explain the effective impact of his bill on section 63 of the bill. Professor Bahls explained that section 63 deals with the application to existing partnerships. Existing partnership agreements will continue, though standing partnerships will amend their partnership agreements prior to that time to take full advantage of this law.

REP. RICE said that the assumption in the fiscal note is that filings will increase by 25 percent and requests for information will increase 15 percent, which are pretty significant numbers. He wondered why those assumptions had been made. Professor Bahls said that Mr. Jacobson had convinced him that filings will increase by 25 percent. Professor Bahls said he is not sure there will a great impact on the general fund, but also noted that the bill directs the secretary of state to recoup additional costs through filing fees. The other reason for the increase in filing would be the statement of authority.

REP. GRIMES asked Professor Bahls what effect the UPA would have on small partnerships should a father and son own a partnership, and the father pass away. Professor Bahls responded that those will be affected in terms of the ease with which a business is transferred from one generation to another. It won't impact inheritance or estate taxes.

Existing law provides that when a parent dies, the partnership is dissolved. That means that any child can go into court, including those children who don't have any interest in the business. Under this law, the obligation of partnership is to buy out the interest of the parent.

REP. SAYLES asked Professor Bahls to clarify the language on page 33, subsection (b), lines 6-9. Professor Bahls agreed that this language is unclear but explained that it is dealing with the general standards of partnership. He said that the language is from the UPA, and Professor Bahls assured the committee there are no words missing.

Closing by Sponsor: None

HEARING ON SB 68

Opening Statement by Sponsor:

SEN. CHET BLAYLOCK, Senate District 43, Laurel, said that SB 68 removes the sunset provision on tort liability for the state of Montana. Before the 1972 constitution, the State of Montana could not be sued unless a person was able to get the Board of Examiners to read the lawsuit. Nor could a person sue any of the subdivisions of the State of Montana. The new constitution removed that prohibition and provided no limits on the amount that could be collected. Therefore, it was costing the state millions of dollars in lawsuits, and it became obvious that the state simply couldn't afford losing that kind of money. Lawmakers have been trying since 1983 to find language that would meet Supreme Court tests. The new liability limits include \$750,000 per claim and \$1,500,000 per accident.

SB 68 removes the sunset law to make this a permanent law of the state of Montana that does not have to be renewed in two years.

Proponents' Testimony:

Bill Gianoulis, Chief Defense Counsel, Department of Administration, discussed the Supreme Court cases which have led to this proposed legislation.

Stan Kaleczyc, Helena attorney in private practice, representing Montana Municipal Insurance Authority (MMIA), said that MMIA is the group self-insurance program for cities and towns. It has two programs: a group workers' compensation self-insurance program and a liability self-insurance program. Approximately 110 cities and towns participate in that liability program in which rates are determined annually by an actuary. The actuary responsible for setting those rates has relied upon the court limits to determine the liability. In anticipation of this bill, MMIA asked the risk manager and actuary to determine what impact there would be if there were no court payments on their program. The result is an estimate of a 34 percent increase in premiums paid by cities and towns if the court minutes were to be abolished. Obviously, these are fiscal impacts, not only for state government but for local governments as well.

Alec Hansen, League of Cities and Towns, said they support Mr. Gianoulis' and Mr. Kaleczyc's testimony. They encourage to pass on SB 68.

Opponents' Testimony:

Russell Hill, Executive Director, Montana Trial Lawyers Association, presented written testimony. EXHIBITS 6 and 7.

Questions From Committee Members and Responses:

REP. RICE asked Mr. Gianoulis to highlight the issue of the sunset provision and its relationship to the constitutionality of this legislation. Mr. Hill said that it was his understanding that the Montana Supreme Court said that, even if the state had applied a rational basis test in this case, the previous statute would be unconstitutional. The second thing is, a rational basis test is a fairly lenient test, and all the legislature has to do is show that there's a rational basis between a law that is passed and the effect it is trying to achieve.

Closing by Sponsor:

SEN. BLAYLOCK said that, if the legislature believes that constitutionality caps would be eroding because of inflation and the passage of time, there is nothing to stop the legislature from raising caps. He does not want to revisit the legislation every two years.

HEARING ON SB 336

Opening Statement by Sponsor:

SEN. BILL YELLOWTAIL, Senate District 50, Wyola, said that SB 336 addresses the matter of judicial salaries in Montana. In spite of the high regard and esteem in which we hold judicial government, Montana compensates its judges at the lowest (50th) rate of any state in the United States. Montana sets its salaries for the judicial branch in statute and places the judges in the position of coming on bended knee to the legislature each biennium to plead the case for their salaries. Base salary increases were legislated in the last two sessions to the District Court judges and Supreme Court justices that have not kept up with neighboring states much less the national average. In view of the state's financial situation in this biennium, the judges have come forth with a very humble and modest approach and have asked merely for salary increases that are the same as the average increase provided for state employees.

Questions From Committee Members and Responses:

REPS. RUSSELL and BERGMAN asked Mr. Conner how different this is from any other law protecting groups/classes of people, i.e., HB 507 which protects referees. Mr. Conner said this is a threat of felony intimidation. An important aspect of this bill is the provision that makes it an offense to threaten as well as to cause bodily injury to a judge. This bill also protects the judge from being exposed to this kind of behavior over a long period of time without some type of opportunity to put this behavior under control.

Closing by Sponsor:

SEN. DOHERTY thinks this is a good bill that provides some protection to people who are attempting to "referee" some of the biggest decisions that we have. This bill will protect judges from threats because they are just doing their job.

EXECUTIVE ACTION ON SB 46

Motion/Vote: REP. VOGEL MOVED SB 46 BE CONCURRED IN. Motion carried unanimously.

EXECUTIVE ACTION ON SB 397

Motion: REP. WYATT MOVED SB 397 BE CONCURRED IN.

Discussion:

REP. CLARK opposes the bill from the standpoint that it protects a class, and he doesn't think there needs to be protection for people due to the nature of their job.

REP. VOGEL disagreed with REP. CLARK'S line of reasoning. REP. VOGEL asserted, as a police officer, it is not his job to be assaulted, harassed or threatened. There must be some means of protection for them as well.

Motion: REP. CLARK moved an amendment to add legislators to the title of the bill.

Discussion:

REP. WHALEN did not disagree with the amendment, but asked Mr. MacMaster if that should be added to the title of the bill. He said it would fit to put legislator in the title of the bill because a legislator is also a lawmaker.

REPS. RUSSELL and MCCULLOCH both agreed that this type of legislation has surfaced before, i.e., HB 507, protecting

HOUSE OF REPRESENTATIVES

Judiciary

COMMITTEE

ROLL CALL

DATE

3-9-93

NAME	PRESENT	ABSENT	EXCUSED
Rep. Russ Fagg, Chairman	✓		
Rep. Randy Vogel, Vice-Chair	✓		
Rep. Dave Brown, Vice-Chair	✓		
Rep. Jodi Bird	✓		
Rep. Ellen Bergman	✓		
Rep. Vivian Brooke	✓		
Rep. Bob Clark	✓		
Rep. Duane Grimes	✓		
Rep. Scott McCulloch	✓		
Rep. Jim Rice	✓		
Rep. Angela Russell	✓		
Rep. Tim Savles	✓		
Rep. Liz Smith	✓		
Rep. Bill Tash	✓		
Rep. Howard Toole	✓		
Rep. Tim Whalen	✓		
Rep. Karyl Winslow			✓
Rep. Diana Wyatt	✓		

HR:1993

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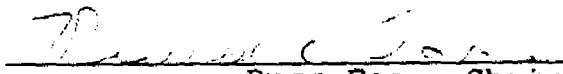
CS-09

HOUSE STANDING COMMITTEE REPORT

March 9, 1993

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that
Senate Bill 46 (third reading copy -- blue) be concurred in .

Signed: 
Russ Fagg, -Chair

Carried by: Rep. Fagg

Committee Vote:
Yes , No ☒

531419SC.Hpf

TESTIMONY OF
STEVEN C. BAHLS

EXHIBIT 4
DATE 3-9-93
SB 46

in support of
Senate Bill 46
House Judiciary Committee
(Montana Uniform Partnership Act)

My name is Steven Bahls. I have the pleasure of serving as a Professor and the Associate Dean at the University of Montana School of Law. For the past eight years, I have taught the Agency and Partnership course at the School of Law. I also teach agricultural law. Prior to teaching, I practiced law for six years, primarily representing small businesses. I am the chair of the State Bar's Business Law Committee of the Tax, Probate and Business Section.

I am here today to support SB 46 (the Montana Uniform Partnership Act). SB 46 passed the Senate on a voice vote. The proposed bill was drafted and approved in 1992 by the National Conference of Commissioners on Uniform State Laws. I am here today at the request of the Montana Commissioners. The National Conference of Commissioners on Uniform State Laws has drafted numerous pieces of legislation already adopted in Montana, including the Uniform Probate Act and the Uniform Commercial Code. Its high quality, uniform legislation sets the standard for legislation in the United States. Please permit me to include in the record, the official comments to the Uniform Partnership Act as prepared by the National Conference of Commissioners on Uniform State Laws.

Montana partnerships are currently governed by Chapter 10 of Title 35. The current law was drafted 78 years ago by the Uniform Law Commissioners. It was adopted in Montana in 1947 and has remained relatively unchanged since then. The current law governs the definition of a partnership, the duties of partners to each other, the ability of partners to enter into contracts, the partners obligations to creditors and dissolution of a partnership. In short, the existing law governs the internal affairs of a partnership.

The new Uniform Partnership Act, as embodied in SB 46, does not greatly expand the scope or coverage of the existing law; instead it updates the law to reflect modern commercial realities. It also clarifies numerous ambiguities in the law. The distilled experience of 78 years since the promulgation of the original Uniform Partnership Law provides the basis for these changes.

Senate Bill 46, though drafted by the Uniform Law Commissioners, has been modified in one primary respect. Working with the attorney for the Office of the Secretary of State, I have drafted provisions for the optional filings that are consistent with the filing provisions of the Secretary of State for other business organizations. With this exception (and the exception of stylistic changes proposed by the Legislative Council) the Act remains a Uniform Act.

It is quite important for Montana to provide its businesses with an up-to-date partnership law. Partnerships and those dealing with partnerships should not be subjected to the uncertainty and ambiguity found in our existing out of date law. Partnerships exist when two or more persons carry on a business for profit as co-owners. People doing business together may be partners even if they do not have a written partnership agreement. It is one of the few types of business organization that the law permits to be formed without a required filing with the secretary of state. Partnerships are often formed without the aid of an attorney. Because many partnerships do not have the benefit of expert legal advice or a written partnership agreement, it is important that the law clearly and unambiguously provide for sensible governance of partnership affairs.

Though most of the proposed changes in the law could be described as in the nature of housekeeping (that is, clarification of ambiguities), several of the changes are more significant. I would like to describe these changes.

1. Nature of a Partnership. The current law does not clearly state whether a partnership is considered an aggregation of individuals or an entity. The provisions of the current law lead to inconsistent conclusions. The issue of whether a partnership is an entity or an aggregation of individuals is important in resolving several questions:

- Can an individual partner bind the partnership even if his or her acts are not authorized by the partnership?
- How is property to be held (e.g. by the partnership or in the joint names of the partners)?
- Does a partnership continue when a partner dies?

The new law clearly provides that a partnership is an entity. Section 11. As a result, under the new law:

- Property can be held by the partnership. The cumbersome provision of the old law, that property is owned as tenants in partnership, no longer applies. It is the entity which conveys the property. Section 13 and 16(a)
- The partnership, as an entity, can effectively designate which partners have authority to bind the partnership to a contract and can prohibit partners from binding the partnership to real estate contracts, unless the contracts are authorized. Section 17

EXHIBIT #2
DATE 3-9-93
58-46

- A partnership is no longer dissolved when an individual partner dies or resigns from the partnership. The old rule that a partnership is dissolved upon the death or resignation of a partner was cumbersome and created substantial problems for partnerships (especially partnership not employing an attorney) wishing to continue after the death or dissolution of a partnership. Section 18

2. Statement of Authority. The new law continues the previous general rule that partners are agents of each other. Section 15. At times, in practice, this rule can lead to unintended results. Sometimes partners are able to bind a partnership to a contract, even though the contract was not authorized by the other partners. Section 15. The new law would provide a vehicle to protect the partnership from a partner, who without authority, sells partnership real estate or binds the partnership to a real estate contract. The new law permits the filing of a statement of partnership authority with the Secretary of State. This statement can be used to limit the power of certain partners. Section 17. The additional costs associated with filing these statements incurred by the Secretary of State must be recouped by the Secretary of State in the form of filing fees. Section 6(6).

The problem of partners entering into contracts without clear authority to do so is a significant problem. See *Walsh v. Ellingson Agency*, 188 Mont. 367, 613 P. 2d 1381 (1980) (dispute over whether one partner could convey property on the objection of another partner) and *Ditzel v. Kent*, 131 Mont. 129, 308 P. 2d 628 (1957) (dispute over whether partners agreement to pay a commission bound the partnership). Consider as an example the family farm partnership. Suppose the partners intend that only the first generation (not the second) partners have the authority to sign real estate contracts that bind the partnership. Under the current law, contracts signed by the second generation might nonetheless be enforceable if the second generation partners appear to be acting with apparent authority. MCA § 35-10-301. Under the new law, a filing could be made with the secretary of state, disclaiming the authority of the younger partners to enter into real estate transactions on behalf of the partnership. Section 17(1) and (2). If the younger generation attempts to transfer property in violation of the limits of their authority on record with the secretary of state, the transaction is ineffective.

The new law permits partners to effectively agree who has authority and, by filing a public notice with the secretary of state, to put creditors or others on notice who has authority. The result is increased certainty in commercial contracts. It will also reduce or eliminate the need for small businesses to provide banks and others with expensive attorneys opinions as to who has authority.

In addition, existing law provides that a partner retiring from a partnership (or a deceased partners estate) can be liable for the debts of the partnership even if those debts arise after the date of the partners death or retirement. See MCA § 35-10-607(b). The new law permits partners to eliminate their liability for debts incurred after their death or retirement by filing a notice of their disassociation with the partnership with the secretary of state. Section 42. The family farm partnership might again serve as a good example. Suppose Dad retires and moves off the farm, leaving the farm to his children with whom he operated the farm in partnership. Unless Dad notified each farm creditor of his retirement and published notice in the local newspaper of his retirement, under existing law, Dad could be liable for new debts incurred by his children after his retirement. Under the new law, Dad can protect himself from liability for most new debts by filing a simple notice with the secretary of state.

3. Fiduciary Responsibility. The current law is largely silent as to the partners duties toward each other. As a result, it is up to the courts to establish the extent of the duty owed from one partner to another. Courts in various jurisdictions have taken inconsistent approaches. Some courts are quick to second guess the actions of partners because they are "trustees." See, e.g. *Meinhard v. Salmon*, 249 N.Y. 458, 164 N.E. 545 (1928), (the classic statement of partners' duties, adopted in Montana in *Murphy v. Redland*, 178 Mont. 296, 583 P.2d 1049 (1978)). Other courts are less eager to second guess the actions of partners, indicating that so long as the partner was acting in good faith the partner will be protected. *Johnson v. Weber*, 166 Ariz. 528, 803 P. 2d 439 (1990); *Duffy v. Piazza Construction, Inc.*, 62 Wash App. 19 815 P. 2d 267 (1991). Montana law is not clear about this issue. As such, to increase certainty, the new law provides

- Partners must act in good faith toward each other (Section 28(4));
- Individual partners may not make a profit at the expense of the partnership (Section 28(2)); and
- Courts may not second guess management decisions, unless the partner making the decision acted with gross negligence or acted recklessly (Section 28(3)).

The impact of the rule may again be illustrated by again turning to the family farm partnership. Suppose Dad, as a partner, substantially expands the farm by buying additional acreage with borrowed money. Further, suppose Dad's motivation is to expand the farm so that the farm might also support his daughter, who just graduated from the ag school in Bozeman. Let's assume that shortly after buying

the land interest rates increase and land prices plummet. Suppose the farm is foreclosed and the children sue Dad for his alleged misjudgment in expanding the farm partnership for the benefit of his daughter. The new law would protect Dad from a court, with the benefit of 20/20 hindsight vision, second guessing his judgement unless Dad was grossly negligent or acted recklessly. By protecting Dad and other partners from second guessing, Dad and the other partners are freer to take calculated risks and make the judgements that entrepreneurs must make.

4. Dissolution. Under the existing law, a partnership dissolves when a partner dies or when a partner retires or quits the partnership. MCA § 35-10-603. When a partnership dissolves, any partner who has not wrongfully dissolved the partnership, may wind-up the partnership. MCA § 35-10-607(1), 609 and 610(1). Winding up usually consists of selling the assets of the partnership and applying the cash proceeds to pay the liabilities and the amounts due the partner MCA § 35-10-610(1).

This existing statutory scheme is often inappropriate. Very often the remaining partners in a partnership desire to continue its business and simply buy out the interest of the retiring or deceased partner. To accomplish the goal of having the partnership continue, under existing law, often requires complex legal documentation.

Under the proposed law, partnerships do not automatically dissolve when a partner dies, retires or otherwise disassociates. Section 38. Instead, the partnership may continue, if the partner's interest is purchased. The new law properly recognizes that a withdrawing partner, whose interest the partnership is willing to purchase, should not be allowed to force dissolution.

Allow me to once again return to the family farm partnership. For purposes of this illustration, assume the family farm partnership has no written agreement and the partners have not agreed on a specific date of dissolution. Suppose Junior, a partner in the family farm partnership, decides to go to law school. After taking a course in partnership law and learning of his rights, he decides to quit the partnership. Under existing law, by quitting the partnership, Junior has forced dissolution. MCA § 35-10-603. Assume that the remaining members of the family wish to continue. Under existing law, Junior (contrary to the other partners' wishes) may wind-up the partnership. MCA §§ 35-10-607(1)(a) and 35-10-609. In doing so, Junior may force the liquidation of the assets of the farm to pay the liabilities and amounts due to the partners. MCA § 35-10-610(1). The winding up process, under existing law, could result in the loss of the family farm. The new law eliminates this risk by permitting the partnership to buy Junior's interest

without dissolving the partnership. Section 38.

EXHIBIT #2
DATE 3-9-93

The existing law is appropriate for partnerships operating in the first half of this century. It is no longer appropriate for partnerships operating in 1993. At the turn of the century most partnerships were relatively small partnerships with relatively few partners. Partners, perhaps, were more trusting of each other and less eager to ask a court to second guess decisions made by their co-partners. In today's increasingly complex world, it is not uncommon to have 20 or more partners in a partnership. Courts are asked with increasing frequency to resolve partnership disputes. Partners, and courts, need a clear law that recognizes today's commercial realities.

I recognize that this is a lengthy bill with many technical changes. Please remember, however, that the act is a Uniform Act, drafted by the many leading authorities in the nation. These experts, as have Montana attorneys, studied this bill line for line. Continued uniformity in the law is highly desirable. Failure to adopt this bill will mean that Montana will eventually be out of step as neighboring states adopt this Uniform Act. Montana businesses deserve the best, most modern, partnership law available. Adoption of SB 46 will cost the state nothing (any costs associated with additional filings are to be passed on as filing fees- Section 6(6)), but will provide added certainty for businesses operating as partnerships. This legislation, if adopted, will provide a quality partnership law serving partners well into the twenty-first century.

EXHIBIT #3
DATE 3-9-93
 SB-46

March 9, 1993
Exhibit #3
Senate Bill No. 46

Exhibit #3 is a copy of the "Uniform Partnership Act (1992)" presented in support of SB 46. The original is stored at the Historical Society at 225 North Roberts Street, Helena, MT 59620-1201. The phone number is 444-2694.

SECRETARY OF STATE
STATE OF MONTANA

EXHIBIT 4
DATE 3-9-93
SB 4

Mike Cooney
Secretary of State



Montana State Capitol
Helena, MT 59620

Testimony in Support of SB 46

Before the House Judiciary Committee

Presented by Garth Jacobson

Representing the Office of the Secretary of State

March 8, 1993

Mr. Chairman and members of the House Judiciary Committee, for the record I am Garth Jacobson representing the Office of the Secretary of State. I am here testifying in support of SB 46, the Uniform Partnership Act. While the office supports this legislation because it will clarify and revise the law governing partnerships, I will not address those improvements. The focus of my testimony today is the affect SB 46 will have on the office of the Secretary of State.

SB 46 creates a new filing options for partnerships to make public disclosures as the authority or disassociation of a partner. This information is vital for creditors who need to know if a certain partner still is with the business or if that partner has the authority to enter into a binding agreement.

SB 46 make the filing of these disclosure statements connected to the filing of an assumed business name. Therefore a partnership would have to have an ABN on file with this office before it could file one of these disclosure states. This law will increase the work duties of the Secretary of State's office due to the increase in the amount of ABN and partnership disclosure filings. Based upon our estimates the office anticipates the need for one half an FTE to handle the increased filings. However the costs of the FTE and operational expenses will be covered by the filing fees which will generate a slight increase in revenue for the general fund.

In conclusion SB 46 is a good bill and needed in Montana. The Office of the Secretary of State is ready and willing to serve the business community with the increases filing duties provided it receives the resources to do the extra work. This bill will have a positive fiscal impact on the general fund. I therefore urge your favorable consideration of this legislation.

March 9, 1993

Lance R. Hoskins
Dorsey & Whitney
1200 First Interstate
401 North 31st Street
P.O. Box 7188
Billings, Montana 59103
(406) 252-3800

OUTLINE OF
TESTIMONY IN SUPPORT OF SENATE
BILL 46 (Montana Uniform Partnership Act)

- I. Introduction.
- II. I support Senate Bill 46 ("SB 46"). As a Montana practicing attorney, I support SB 46 for the following reasons:
 - A. Revenue neutral,
 - B. Benefits of uniform legislation,
 - C. State of the art,
 - D. Clarify ambiguities of existing law,
 - E. Recognize partnership as "entity," and
 - F. Responsive to modern commercial needs and practices.
- III. Conclusion.

HOUSE OF REPRESENTATIVES
VISITOR REGISTER

Judiciary COMMITTEE BILL NO. SB 46
DATE March 9, 1993 SPONSOR(S) M. Halligan
PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	SUPPORT	OPPOSE
Steven C. Bahls Missoula, MT	Self	☒	☐
Lance R. Hoskins Billings MT	Self	☒	☐

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS
ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.